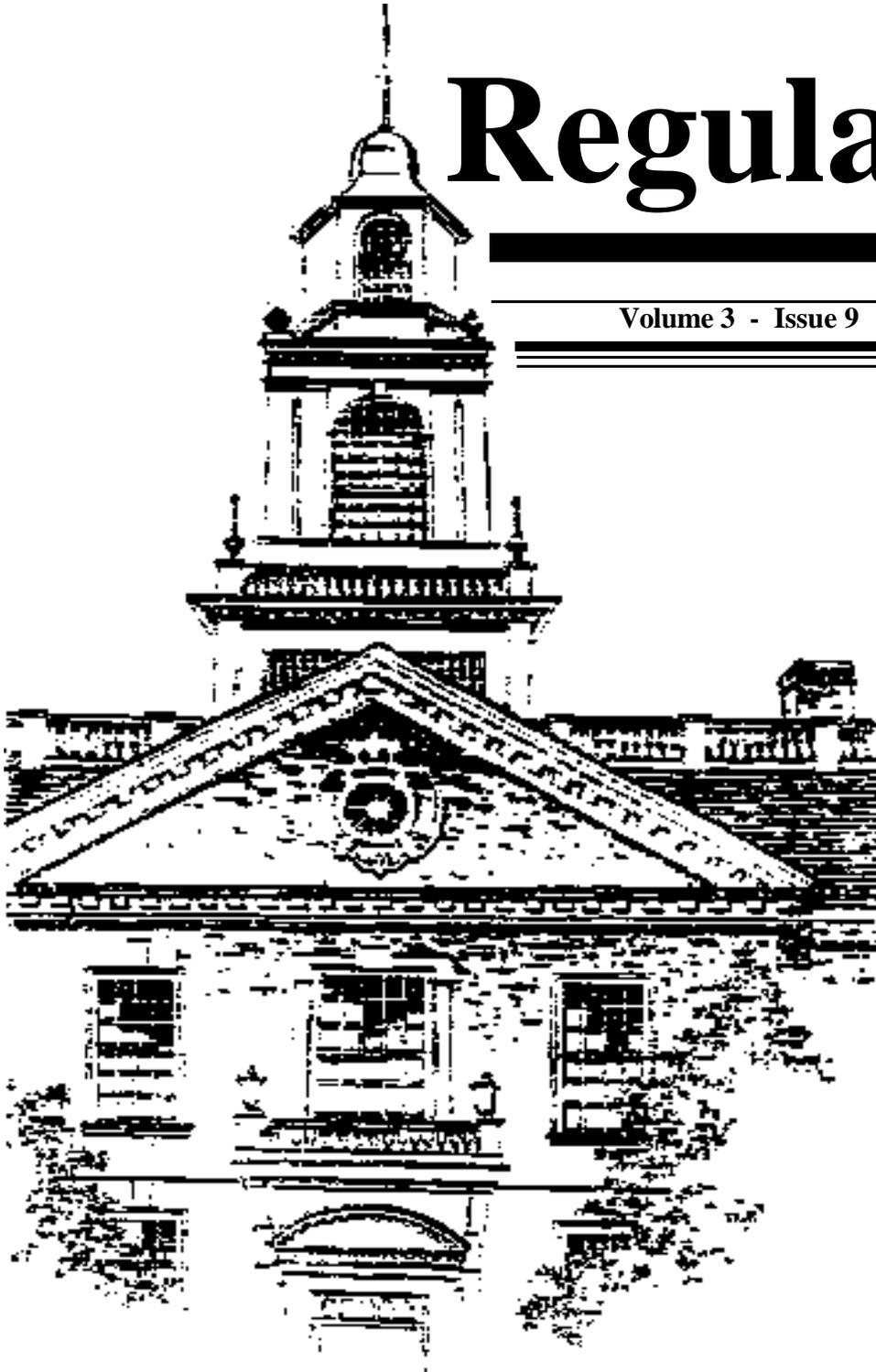


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# Delaware Register of Regulations



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Issue Date: March 1, 2000

Volume 3 - Issue 9

Pages 1108 - 1278

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Proposed

Final

Governor

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Appointments

General Notices

Calendar of Events &

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before February 15, 2000.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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### CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**3 DE Reg. 737 - 742 (12/1/99)**

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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## INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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### CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ACCOUNTANCY  
Statutory Authority: 24 Delaware Code,  
Section 105(1) (24 Del.C. §105(1))**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Pursuant to due notice of time and place of hearing published in the News Journal and the Delaware State News, and pursuant to 29 Del.C. §10115, having published the following proposed regulations in the Register of Regulations on January 1, 2000, a public hearing on the adoption of the proposed new rules and regulations was held before the Delaware Board (“Board”) of Accountancy on February 23, 2000. **Following deliberations, the Board voted to approve the following rules and regulations in their entirety, with the exception of Rules 6.3.2 and 6.4.2, to which amendments were proposed, as indicated herein. Accordingly, a second public hearing will be held as to the new proposed amendments. A final order will issue adopting all approved rules at the conclusion of all public hearings.**

A public hearing will be held on the proposed amendments to the Rules and Regulations on Wednesday, April 26, 2000 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive

and consider input in writing from any person on the proposed amendments to the Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**PROPOSED REGULATIONS****1.0 GENERAL PROVISIONS**

1.1 Pursuant to 24 *Del.C.* Chapter 1, the Delaware Board of Accountancy (“the Board”) is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board’s Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board’s President shall preside at all meetings of the Board and shall sign all official documents of the

Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 *Del.C.* Chapter 1.

1.7 Board members are subject to the provisions applying to "employees" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 *Del.C.* Chapter 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

## 2.0 PROFESSIONAL CONDUCT

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

## 3.0 USE OF DESIGNATIONS

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to

practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the

abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1. An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2. A partnership, professional association or professional corporation composed of public accountants which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, partnership, or corporation shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual conferred by the Internal Revenue Service as an enrolled agent to use that title or the abbreviation "EA".

3.5 No person, partnership, or corporation shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

#### **4.0 APPLICATIONS**

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

4.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

#### **5.0 EXAMINATION AND CERTIFICATE REQUIREMENTS**

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good

character as that term is defined in 24 *Del.C.* §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

## 6.0 REQUIREMENTS FOR PERMIT TO PRACTICE CERTIFIED PUBLIC ACCOUNTANCY

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 *Del.C.* §108(c)(2) and Sections 6.3, 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who seek a permit based on their experience as an employee of a firm engaged in the practice of certified public accountancy shall meet the following standards and requirements:

6.3.1 The distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements including appropriate footnote disclosure and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.

6.3.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area (audits, reviews, taxes) and stating the approximate time devoted to each, and affirming that the applicant discharged his or her duties in a competent

and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.3.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

6.4 Applicants who seek a permit based on their experience in government or industry shall meet the following standards and requirements:

6.4.1 The applicant shall submit a detailed description of the education and experience requirements of entry to his or her job, a detailed description of his or her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his or her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive experience resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the direct supervision of a certified public accountant who holds a valid permit to practice certified public accounting.

6.4.2 ~~Each applicant must submit an affidavit from each supervising CPA with whom qualifying experience is claimed, setting forth the dates of employment and verifying the applicant's statement of his or her duties and responsibilities. Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple~~

CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.4.3 Each application under this subsection will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the application materials, for the purpose of determining whether it is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy. Such experience may be prorated at less than 100% equivalence.

6.5 Applicants who seek a permit based on their experience in the practice of public accountancy shall meet the following standards and requirements:

6.5.1 The distinguishing characteristic of practice as a public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.5.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

## **7.0 REQUIREMENTS FOR PERMIT TO PRACTICE PUBLIC ACCOUNTANCY**

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 *Del.C.* §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

## **8.0 RECIPROCITY**

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 *Del.C.* §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 *Del.C.* §109 (a) (3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 *Del.C.* §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing

authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

## 9.0 FIRM PERMITS TO PRACTICE

9.1 For purposes of 24 *Del.C.* §111 and this Section of the Rules and Regulations, the term “principal of a firm” is defined as any individual who has an equity interest in the firm.

9.2 Certified public accounting and public accounting firms practicing as corporations must be organized as professional corporations (“P.C.”) or professional associations (“P.A.”) in compliance with The Professional Service Corporation Act, 8 *Del. C. Sec. 671, et. seq.*

9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.

9.4 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

## 10.0 CONTINUING EDUCATION

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that

period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

### 10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations.

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters.

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education.

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.)

10.5.3.6 Other organized educational programs on technical and other practice subjects including “in-house” training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education

requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

#### 10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies.

#### 10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention

of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting

Auditing

Taxation

Management Services Mathematics, Statistics, Probability, and Quantitative Applications in Business

Finance, Production and Marketing

Personnel Relations, Business Management and Organization

Computer Science

Communication Arts

Economics

Business Law

Social Environment of Business

Specialized Areas of Industry

Administrative Practice

#### 11.0 ADDITIONAL PROVISIONS CONCERNING EXAMINATIONS

11.1 All examinations required under 24 *Del.C.* Chapter 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor

examinations as may be required to qualify for a certificate.

#### 11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

#### 11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

#### 11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations

following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

#### 11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

#### **12.0. EXCEPTED PRACTICES; WORKING PAPERS**

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 *Del.C.* §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services

connected with mechanical or electronic equipment are subject to all provisions of 24 *Del.C.* Chapter 1.

12.2 Working Papers: For purposes of 24 *Del.C.* §120, the term “working papers” does not properly include client records. In some instances, a permit holder’s working papers may include data which should be part of the client’s books and records, rendering the client’s books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client’s records and should be made available to the client upon request.

### 13.0 HEARINGS

13.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del.C.* §8807(h)(1)-(3).

13.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

13.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

13.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del.C.* Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent’s address as reflected in the Board’s records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

13.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

13.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 *Del.C.* §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

#### 13.2. General procedure

13.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

13.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

13.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board’s office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

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### **DIVISION OF PROFESSIONAL REGULATION**

### **BOARD OF COSMETOLOGY & BARBERING**

Statutory Authority: 24 Delaware Code,  
Section 5106(14) (24 **Del.C.** 5106(14))

The Delaware Board of Cosmetology and Barbering proposes to amend current Rule 5.1, pursuant to 24 *Del.C.* §§ 5106 and 29 *Del.C.* Ch. 101. The purpose of the proposed amendment is to clarify that work experience required for licensure by reciprocity must have been obtained in a state or jurisdiction outside of Delaware.

A public hearing on the proposed regulation will be held on Monday, April 24, 2000 at 9:00 a.m., in Conference Room A, Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested persons on the proposed rule amendment. Oral comments will be received at the public hearing. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments

at the public hearing should notify Gayle Melvin at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

## Delaware Board of Cosmetology and Barbering

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology
- 4.0 Instructor Requirements
- 5.0 Reciprocity Requirements
- 6.0 Equipment for Cosmetology and Barbering Schools
- 7.0 Equipment for Nail Technology Schools
- 8.0 Equipment for Electrology Schools
- 9.0 Course outline for Aesthetician
- 10.0 Equipment for Aesthetics Schools
- 11.0 Registration of Salons and Schools
- 12.0 Apprenticeship and Supervision
- 13.0 Transfer of Nail Technician Hours to Cosmetology Programs
- 14.0 Licensure Requirements
- 15.0 Foreign Diplomas
- 16.0 Health and Sanitation: Electric Nail Files and Laser Technology

### 1.0 Demonstrations

1.1 Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 Del.C. §5103 (1))

### 2.0 Temporary Work Permits

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 Del.C. §5106 (7)

### 3.0 Instructor Curriculum for Barbering and Cosmetology

#### 3.1 Course Outline - Instructor 500 Hours

Subject Matter	Minimum Clock Hours
Orientation	50
Practical Laboratory Management	200
Classroom Teaching and Management	200
Theory and Testing	50

#### 3.2 Course Outline - Instructor 250 Hours

Subject Matter	Minimum Clock Hours
Orientation	25
Practical Laboratory Management	100
Classroom Teaching and Management	100
Theory and Testing	25

(24 Del.C. §5106(13))

### 4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. §5106 (13)).

### 5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent requirements than Delaware ~~would be~~ is required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application. The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.

Reference Section 2 for temporary work permit. (24

**Del.C. §5109(a)****6.0 Equipment for Cosmetology and Barbering Schools**

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).
- 6.1.5 (4) Wet sterilizers (sanitizers).
- 6.1.6 (6) Dozen permanent wave rods.
- 6.1.7 (2) Reclining chair with headrest.
- 6.1.8 (1) Mannequin per student.
- 6.1.9 (12) Work Stations.
- 6.1.10 Mirrors and chairs.
- 6.1.11 (1) Locker for each student.
- 6.1.12 (4) Closed containers for soiled linen.
- 6.1.13 (3) Closed waste containers.
- 6.1.14 (1) Container for sterile solution for each manicure table.
- 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 6.1.17 (1) Cabinet for towels.
- 6.1.18 An arm chair or usable table and chair for each student in the theory room.
- 6.1.19 (3) Timer clocks.
- 6.1.20 Attendance records.
- 6.1.21 (1) Soap machine.
- 6.1.22 (1) Textbook for each student.

(24 **Del.C. §5117 (a)**)

**7.0 Equipment for Nail Technology Schools**

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.
- 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 7.1.12 Attendance Records.
- 7.1.13 Reception Desk.
- 7.1.14 Proper Ventilation.
- 7.1.15 (4) Dry Sterilizers.

7.1.16 (4) Wet Sterilizers.

7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 **Del C. §5117 (a)**)

**8.0 Equipment for Electrology Schools**

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.
- 8.1.2 (1) All purpose chair or lounge.
- 8.1.3 (1) Magnifying lamp (wall mounted or on a stand).
- 8.1.4 (1) Tweezers for each student.
- 8.1.5 (1) Movable table for the epilator.
- 8.1.6 (1) Adjustable stool on wheels.
- 8.1.7 All needles used for treatment must be disposable type only.
- 8.1.8 Sterilizing materials and rubber gloves.
- 8.1.9 (1) Textbook for each student.

**9.0 Course Outline for Aesthetician**

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 **Del.C. §5132(a)**)

**10.0 Equipment for Aesthetics Schools**

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.
- 10.1.2 (1) All purpose chair or lounge.
- 10.1.3 (1) Magnifying lamp (wall mounted or on a stand).
- 10.1.4 (1) Adjustable stool on wheels.
- 10.1.5 Sterilizing materials and rubber gloves.
- 10.1.6 (1) Textbook for each student.

(24 **Del.C. §5130(a)**)

**11.0 Registration of Salons and Schools**

11.1 A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or

instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 **Del.C.** §5117)

#### 12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 **Del.C.** §5107)

#### 13.0 Transfer of Nail Technician Hours to Cosmetology Programs

13.1 Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 **Del.C.** §5107)

#### 14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 **Del.C.** §5113(a)(b). (24 **Del.C.** §5103)

#### 15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

#### 16.0 Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under section 24 **Del.C.** §5113 (24 **Del C.** §§5100, 5101(4), 5112 and 5113)

**DIVISION OF PROFESSIONAL REGULATION****BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del.C. 2509)

PLEASE TAKE NOTICE, pursuant to 29 Del.C. §2509, the Delaware Board of Pharmacy has developed and proposes to adopt changes to Regulations I - Pharmacist Licensure Requirements, II Grounds for Disciplinary Proceeding, and V Dispensing. The changes to Regulation I eliminate the Continuing Education Committee, transferring the Committee's responsibilities to the Board. The conduct previously defined in Regulation II as "gross immorality" is now included in the term "unprofessional conduct". Regulation V may be amended to include a definition for "container", to clarify the activity allowed for supportive personnel to insure a final check of a prescription by a pharmacist and to allow for electronically transmitted prescriptions.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, April 12, 2000 at 12:00 noon in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Rules and Regulations. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address.

This notice will be published in two newspapers of general circulation not less than twenty- (20) days before the hearing in addition to publication in the Register of Regulations. Written copies of the proposed regulations may be obtained from the Board of Pharmacy by contacting Gradella E. Bunting at the above address or calling (302) 739-4798.

**Regulation I****Pharmacist Licensure Requirements****A. Examination Requirements**

1. In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing

evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

2. Candidates must obtain a passing grade of 75 on the ~~NABPLEX~~ NAPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

3. Any applicant who fails the examination shall be entitled to take a re-examination ~~on the Board's next regularly scheduled NAPLEX examination date~~. If an applicant has failed the examination three times, he/she shall be eligible to take the examination ~~at the next regularly scheduled time~~, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

4. Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

**B. Practical Experience Requirements**

1. Applicant must submit an affidavit indicating enrollment in good standing as a student entering the first professional year of college of pharmacy or if the applicant is a graduate of a foreign pharmacy school, produce evidence that he has passed an equivalency examination by the Board.

2. Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del. C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form. The registrant must submit an affidavit of hours currently completed and properly notarized 30 days prior to taking the examination. Applicants who have not completed all the practical experience requirements, but who

have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

### C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

2. Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control. ~~The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.~~

Criteria for Hardship Exemption as Recommended by the ~~Continuing Education Advisory Council~~ Board of Pharmacy:

a) Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

b) The Board of Pharmacy will review requests. ~~The Continuing Education Advisory Council will review requests and send recommendations to the Board.~~

c) The Board will notify the registrant of its decision.

3. Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month)

### D. ~~Advisory Council on Continuing Education~~

~~The Board shall establish a council of six persons to evaluate and approve intrastate programs and to advise the Board on any matters pertinent to continuing education. Three pharmacists are to be recommended by the professional pharmacy organizations of the State; one member will represent independent pharmacists; two shall be members of the Board of Pharmacy; one shall be a pharmaceutical educator from one of the colleges located in Maryland, New Jersey or Pennsylvania. The committee will select a Chairman from among its membership. Appointments shall be for two year periods. No member may serve more than two consecutive terms.~~

### E. D. Continuing Professional Educational Programs

#### 1. Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

#### 2. Approved Provider

a. Any provider approved by ACPE.

b. In-state organization which meets criteria approved by the Board.

#### 3. Application for Delaware State Provider

a. Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

b. The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

#### 4. Criteria for Approval of Delaware State Providers

Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

##### a. Administration and Organization

(1) The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

(2) There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

(3) Such personnel shall be qualified for such responsibilities by virtue of experience and background.

(4) If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

##### (5) Administrative Requirements include:

(a) The development of promotional

materials which state:

1. Educational objectives.
2. The target audience.
3. The time schedule of the activities.
4. Cost to the participant/covered items.
5. Amount of C.E. credit which will be awarded.
6. Credentials of the faculty, presenters, and speakers.
7. Self-evaluation instruments.

(b) Compliance with a quantitative measure for C.E. credit.

1. The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

2. In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

3. The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

4. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

5. The provider must provide the Continuing Education Advisory Council upon request with appropriate records of successful participation in previous continuing education activities.

6. The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

7. The provider must have a policy and procedure for the handling or management of grievances and refunds of tuition.

b. Program Faculty

The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

c. Program Content Development

- (1) Such programs shall involve effective

advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

(a) The social, economic, behavioral, and legal aspects of health care,

(b) the properties and actions of drugs and drug dosage forms,

(c) the etiology, characteristics, therapeutics and prevention of the disease state,

(d) pharmaceutical monitoring and management of patients.

(2) All ancillary teaching tools shall be suitable and appropriate to the topic.

(3) All materials shall be updated periodically to include up-to-date-practice setting.

(4) It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

d. Facilities

The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

e. Evaluation

Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

(1) Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

(2) Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

f. Criteria for Awarding Continuing Education Credits

Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

(1) In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

(2) In order to receive full credit for non-ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) The Committee will only assign credit for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

(4) A maximum of 2 credit hours will be awarded for First Aid or CPR/BCLS courses one time only per registration period.

(5) Credit for Instructors of Continuing Education

(a) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware ~~Continuing Education Advisory Committee~~ of the Board of Pharmacy.

(b) Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(c) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) Credit for On the Job Training:

(a) ~~The Board of Pharmacy Continuing Education Advisory Council~~ does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

(b) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(c) No credit shall be awarded for programs required by an employer for continued

employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

~~F.E.~~ The Verification of Continuing Education - The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the Board.

~~G.F.~~ Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1. Payment of any back fees;
2. Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;
3. Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

~~H.~~ G. Reciprocal Requirements

1. The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

2. Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

3. Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

4. All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.

5. Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

**Regulation II  
Grounds For Disciplinary Proceeding****A. Gross Immorality**

The Board of Pharmacy interprets gross immorality as it appears in ~~24 Del. C. §2518(A)~~ as including but not being limited to:

Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del.C. §2518(A):

1. Knowingly engaging in any activity which violates State and Federal Statutes and Regulations governing the practice of Pharmacy;
2. Knowingly dispensing an outdated or questionable product;
3. Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;
4. Knowingly charging for more dosage units than is actually dispensed;
5. Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;
6. Knowingly dispensing medication without proper authorization;
7. Knowingly defrauding any persons or government agency receiving pharmacy services;
8. Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information.

**B. Unprofessional Conduct**

~~Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del. C. §2518(A):~~

- ~~9~~ 4. Fraudulently altering or forging the contents of prescriptions;
- ~~10~~ 2. Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;
- ~~11~~ 3. Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);
- ~~12~~ 4. Unauthorized substitution;
- ~~13~~ 5. Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;
- ~~14~~ 6. Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;
- ~~15~~ 7. Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;

~~16~~ 8. Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;

~~17~~ 9. Knowingly misbranding a drug by using a brand name when a generic is dispensed;

~~18~~ 10. Practicing under the influence of drugs or alcohol;

~~19~~ 11. The placement of an advertisement which the pharmacist knows to be false or misleading;

~~20~~ 12. Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;

~~21~~ 13. Engaging in activities that would discredit the profession of pharmacy;

~~22~~ 14. Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders.

~~23~~ 15. Using facsimile equipment to circumvent documentation, authenticity, verification or other standards of pharmacy or drug diversion. (Effective 2/29/96)

**Regulation V.  
Dispensing****A. Definitions**

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in

anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCSA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the

signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

24. Container – is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information

regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- a. the name and description of the prescribed drug;
- b. the dosage and the dosage form;
- c. the method and route of administration;
- d. the duration of the prescribed drug therapy;
- e. any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- g. patient techniques for self-monitoring of the drug therapy;
- h. proper storage;
- i. prescription refill information;
- j. the action to be taken in the event of a missed dose; and
- k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

#### D. Supportive personnel

##### 1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal Statutes and Regulations

12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

##### 2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

##### 3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

- 1) Obtaining the medication from stock.
- 2) Typing the label after the pharmacist has interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that ~~such selection is properly checked by the pharmacist before the dose is authorized.~~ a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient.

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision

of the pharmacist. All compounding must be in compliance with FFDC Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

- 1) The formulation is developed by the pharmacist before proceeding with the compounding.
- 2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.
- 3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.
- 4) The finished product is checked by the pharmacist before dispensing.
- 5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

#### E. Automatic Dispensing Devices

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

#### F. Authorization for renewal of prescriptions

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

#### G. Mandatory Patient Profile Record System

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

- a. The family name and first name of the person

for whom the medication is intended (the patient);

- b. The address of the patient and phone number;
- c. The patient's age, or date of birth, and gender;
- d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;
- e. The number or designation identifying the prescription;
- f. The prescriber's name;
- g. The name, strength, quantity, directions and refill information of the drug dispensed;
- h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;
- i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.
- j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

#### H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

1. Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

- a. The request comes from a registered pharmacist.
- b. The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation V, and includes the first and last name of the pharmacist transmitting the information.
- c. The prescription used for refills must be clearly identified as a copy.
- d. The copy shows the date and the file number of

the original prescription and indicates the name and address of the pharmacy providing the copy.

- e. The copy shows the last date of dispensing.
- f. Only the actual number of refills remaining are indicated.

g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

#### I. Automated Data Processing Systems

##### 1. PROFILES

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

##### 2. PRESCRIPTION (Drug Order) INFORMATION

Prescription information (drug order) shall include, but not be limited to:

- a. Original dispensing date
- b. Name and address of patient (patient location if in an institution)
- c. Name of prescriber
- d. DEA number of prescriber in the case of a controlled substance
- e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- f. Renewals authorized
- g. Directions of use for patient

##### 3. RECORDS OF DISPENSING

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

- a. Quantity dispensed
- b. Date of dispensing
- c. Serial Number (or equivalent if an institution)
- d. The identification of the pharmacist responsible for dispensing
- e. Record of renewals to date
- f. Name and strength of medicine

##### 4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- a. Serial number of prescription (equivalent if an institution)
- b. Date of processing
- c. Quantity dispensed
- d. The identification of the pharmacist responsible for dispensing
- e. Medication dispensed

##### 5. AUXILIARY RECORDKEEPING SYSTEM

An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

##### 6. COMMON DATA BASE

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

##### 7. TRANSFER OF PRESCRIPTIONS VIA ADP

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.

b. A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

c. The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e) To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

#### 8. ~~FACSIMILE~~ TRANSMISSION OF PRESCRIPTIONS

~~Electronically transmitted prescription orders by facsimile transmission shall meet the following requirements:~~

~~a. The prescription order shall include, in addition to the State and Federal requirements for non-controlled and controlled prescriptions, the name, fax number, and phone number of the transmitter for verbal confirmation, the time and date of transmission, the number of pages transmitted, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating that the fax should not be seen by unauthorized persons. All prescription orders for controlled substances shall be hand-signed by the practitioner.~~

~~b. Practitioners or their authorized agents transmitting the prescription must provide voice verification when requested by the pharmacist receiving the prescription order. The receiving pharmacist has the final responsibility of determining validity of the transmission.~~

~~e. If the original prescription is given to the patient, it must be noted on the face of the prescription that the prescription order was faxed, the name of the receiving pharmacy, and the initials of the person who faxed the order.~~

~~d. An electronically transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.~~

~~e. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist authorized prescriber confidentiality and security.~~

#### J. ELECTRONIC TRANSMISSION OF PRESCRIPTIONS

1. All Prescription Drug Orders communicated by way of Electronic Transmission shall:

a. be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

b. identify the transmitter's phone number for

verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

c. be transmitted by an authorized Practitioner or his designated agent; and

d. be deemed the original Prescription Drug Order, provided it meets the requirements of this subsection.

2. The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

3. The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

4. All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5. Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

6. Controlled substance prescriptions may only be electronically transmitted via a facsimile.

7. Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

a. The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

b. Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

c. A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

d. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist authorized prescriber confidentiality and security.

e. Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

**⌘ K. Return of Medications and Supply**

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF CLINICAL SOCIAL WORK**  
**EXAMINERS**

Statutory Authority: 24 Delaware Code,  
Section 3906(1) and (7) (24 **Del.C.** §3906(1)(7))

**Public Hearing Notice**

The Delaware Board of Clinical Social Work Examiners proposes to amend and adopt new rule changes, pursuant to 24 **Del.C.** Section 3906(1) and (7) and 29 **Del.C.** Chapter 101. The purpose of the hearing is to adopt proposed rule changes: amending Rule 5 and 6.3 regarding Continuing Education, and adding a new Rule 7.0 addressing Ethics.

The Board's Rule regarding Continuing Education has been rewritten in its entirety. Many provisions in the Board's current Rule 5 remain substantively the same, but some have been renumbered or corrected for grammar and format. Substantive changes include clarifying requirements for hardship extension; allowing credit for certain self-directed activities and requiring pre-approval of such activities by the Board; and clarifying content requirements and Category I and II courses. Rule 6.3 has been amended to make its definition of "hardship" consistent with that in Rule 5.1.3. Finally, Rule 7.0, Code of Ethics is a new rule designed to provide licensees with rules and guidelines for the conduct of safe, ethical practice in the areas of client services, relationships with clients, confidentiality, ethical business practices and clinical supervision.

A public hearing on the proposed rules will be held on Monday, April 17, 2000 at 9:30 a.m. in Conference Room B,

Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input in writing from any person on the proposed rules. Any written comments should be submitted to the Board office, in care of Gayle L. Franzolino, 861 Silver Lake Blvd., Suite 203, Cannon Bldg., Dover, DE 19904. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed rules, or to make comments at the public hearing should notify Gayle L. Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**Board of Clinical Social Work Examiners**

**1.0 Election of Officers and Responsibilities**

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

1.2 Officers have the following responsibilities:

1.2.1 The President will preside at all meetings and sign official documents on behalf of the Board.

1.2.2 The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.

1.2.3 The Secretary will preside over meetings in the absence of the President and Vice-President.

**2.0 Professional Supervision**

2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant's level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:

2.1.1 Individual case reviews.

2.1.2 Evaluations of diagnosis and courses of treatment.

2.1.3 Proper adherence to agency policy and procedures.

2.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact must be on a one-to-one face-to-face basis.

2.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name, business address, license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; and the number of one-to-one face-to-face supervisory hours.

2.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

### 3.0 Application and Examination

3.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

3.2 The Board will not review incomplete applications.

3.3 All signatures must be original on all forms.

3.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del.C. § 3907(a)(1))

### 4.0 Renewal

4.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

### 5.0 Continuing Education

#### 5.1 Required Continuing Education Hours:

5.1.1 All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Year: Credit \_\_\_\_\_ Hours  
Required:

January 1—June 30 35 hours

July 1—December 31 25 hours

License Granted During Second Year: Credit \_\_\_\_\_ Hours  
Required:

January 1—June 30 15 hours

July 1—December 31 -5 hours

5.1.3 Any licensee seeking to submit continuing education hours for the Board's approval after the end of a licensing period must submit a written request to the Board before the end of the licensing period and pay the appropriate administrative fee. The Board will grant such extensions only on a showing of good cause. No extension shall be for more than 120 days after the end of the licensing period. No license shall be renewed unless the licensee has fulfilled the continuing education requirement or received a good cause extension from the Board.

#### 5.2 Definition of Continuing Education:

5.2.1 Continuing education is defined to mean courses in colleges and universities, televised and extension courses, independent study courses, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including preparation of a first-time clinical course. This definition also includes staff development activities provided by the various agencies.

5.2.2 Any program submitted for continuing education hours must have been attended during the current biennial licensing period.

5.2.3 Clock hour credit will be for the actual number of hours during which instruction was given during the program, excluding meals and breaks.

#### 5.3 Continuing Education Requirements:

5.3.1 Category I: A minimum of thirty (30) clock hours of continuing education shall be in the assessment, diagnosis, and treatment of mental, emotional, and psychosocial disorders, shall include at least three (3) clock hours in ethical social work practice.

5.3.2 Category II: The remaining hours can be taken in social research, psychology, sociology, human growth and development, child and family development, health, social action, advocacy, human creativity, and any other offering that directly relates to the licensee's practice. A maximum of five (5) clock hours may be given for a first-time preparation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

#### 5.4 Course Documentation:

To receive continuing education credits, each licensee must provide documentation which identifies the date and place of the course, the number of instructional

~~hours attended, the agenda, outline or brochure of presentation, and certificate of attendance stating hours of attendance. The Board will accept and retain the original or photocopy of such documents.~~

## 5.0 Continuing Education

### 5.1 Required Continuing Education Hours:

5.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation, as required by Rule 5.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

<u>License Granted During First Year Of Licensing Period</u>	<u>Credit Hours Required</u>
January 1 - June 30	35 hours
July 1 - December 31	25 hours

<u>License Granted During Second Year Of Licensing Period</u>	<u>Credit Hours Required</u>
January 1 - June 30	15 hours
July 1 - December 31	5 hours

5.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

### 5.2 Definition and Scope of Continuing Education:

5.2.1 Continuing Education is defined to mean approved courses offered by colleges and universities, televised and extension courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activity and preparation of a first-time clinical course as described herein.

5.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

5.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

5.2.1.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board.

5.2.2 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

5.2.3 An "hour" for purposes of continuing education credit shall mean 60 minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

5.2.4. The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 15 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

5.2.5 The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

### 5.3 Continuing Education Content Requirements:

During each biennial licensing period, licensees shall complete a minimum of thirty (30) hours of continuing education in Category I courses. The remaining continuing education hours may be taken in Category II courses. At least three (3) of the 30 Category I hours shall be in the area of social work ethics.

Category I: Courses which have as their primary

focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.

Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse

- a) research methods and findings;
- b) psychology and sociology;
- c) human growth and development;
- d) child and family constructs;
- e) physical illness and health;
- f) social action;
- g) advocacy;
- h) human creativity;
- i) spirituality
- k) HIV

#### 5.4 Continuing Education Reporting and Documentation

5.4.1 In order to receive continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31<sup>st</sup> of the biennial licensing period.

5.4.2 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended; documentation identifying the date and location of the course, the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: 24 Del.C. §§ 3906(7), 3912.

#### 6.0 Inactive Status (24 Del.C. § 3911(c))

6.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

6.2 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required

by Rule 5.0.

6.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, illness and involuntary unemployment, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.

#### 7.0 Ethics

##### 7.1 Duties to Client

7.1.1 The LCSW's primary responsibility is the welfare of the client.

7.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/spirituality, national origin, handicap, political affiliation, or sexual orientation.

7.1.3 When a client needs other community services or resources, the LCSW has the responsibility to assist the client in securing the appropriate services.

7.1.4 The LCSW should refer a client to other service providers in the event that the LCSW cannot provide the service requested. In the case of a referral, no commission, rebate or any other remuneration may be given or received for referral of clients for professional services, whether by an individual or an organization.

7.1.5 The LCSW must, in cases where professional services are requested by a person already receiving therapeutic assistance from another professional, clarify with the client and the other professional the scope of services and division of responsibility which each professional will provide.

7.1.6 The LCSW must maintain appropriate boundaries in his/her interactions with a client. The LCSW must not engage in sexual activity with a client. The LCSW must not treat a family member or close personal friend where detached judgment or objectivity would be impaired. Business, social or professional relationships with a client (outside of the counseling relationship) should be avoided, where such relationships may influence or impair the LCSW's professional judgment.

##### 7.2 Confidentiality/privileged Communications

7.2.1 The LCSW must safeguard the confidentiality of information given by clients in the course of client services.

7.2.2 The LCSW must discuss with clients the nature of and potential limits to confidentiality that may arise in the course of therapeutic work.

7.2.3 No LCSW or employee of such person may disclose any confidential information they may have acquired from persons consulting them in their professional capacity except under the following conditions:

7.2.3.1 With the written consent of the person or persons (the guardian, in the case of a minor) or, in the

case of death or disability, of his/her personal representative, or person authorized to sue, or the beneficiary of an insurance policy on his/her life, health or physical condition, or

7.2.3.2 Where the communication reveals the contemplation of a crime or harmful act.

7.2.3.3 When the person waives the privilege by initiating formal charges against the LCSW.

7.2.3.4 When otherwise specifically required by law or judicial order.

7.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

### 7.3 Ethical Practice

7.3.1 The LCSW is responsible for confining his/her practice to those areas in which he/she is legally authorized and in which he/she is qualified to practice. When necessary the LCSW should utilize the knowledge and experience of members of other professions.

7.3.2 The LCSW is responsible for providing a clear description of what the client may expect in the way of scheduling services, fees and any other charges or reports

7.3.3 The LCSW, or any employee or supervisee of the LCSW, must be accurately identified on any bill as the person providing a particular service, and the fee charged the client should be at the LCSW's usual and customary rate. Sliding fee scales are permissible.

7.3.4 An LCSW employed by an agency or clinic, and also engaged in private practice, must conform to contractual agreements with the employing facility. He/She must not solicit or accept a private fee or consideration of any kind for providing a service to which the client is entitled through the employing facility.

7.3.5 An LCSW having direct knowledge of a colleague's impairment, incompetence or unethical conduct should take adequate measures to assist the colleague in taking remedial action. In cases where the colleague does not address the problem, or in any case in which the welfare of a client appears to be in danger, the LCSW should report the impairment, incompetence or unethical conduct to the Board.

7.3.6 The Board has voted to adopt the Voluntary Treatment Option, in accordance with 29 Del.C. §8807(n).

7.3.7 An LCSW should safeguard the welfare of clients who willingly participate as research subjects. The LCSW must secure the informed consent of any research participant and safeguard the participant's interests and rights.

7.3.8 In advertising his or her services, the LCSW may use any information so long as it describes his/her credentials and the services provided accurately and without misrepresentation.

7.3.9 In the areas of computer and Internet technology and non-established practice, the LCSW should inform the client of risks involved. The LCSW should exercise careful judgment and should take responsible steps (such as research, supervision, and training) to ensure the competence of the work and the protection of the client. All precautions should be taken with computer-based communications to ensure that no confidential information is disseminated to the wrong individual and identities are protected with respect to privacy.

### 7.4 CLINICAL SUPERVISION

7.4.1 The LCSW should ensure that supervisees inform clients of their status as interns, and of the requirements of supervision (review of records, audiotaping, videotaping, etc.). The client shall sign a statement of informed consent attesting that services are being delivered by a supervisee and that the LCSW is ultimately responsible for the services. This document shall include the supervising LCSW's name and the telephone number where he/she can be reached. One copy shall be filed with the client's record and another given to the client. The LCSW must intervene in any situation where the client seems to be at risk.

7.4.2 The LCSW should inform the supervisee about the process of supervision, including goals, case management procedures, and agency or clinic policies.

7.4.3 The LCSW must avoid any relationship with a supervisee that may interfere with the supervisor's professional judgment or exploit the supervisee.

7.4.4 The LCSW must refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate professional services.

7.4.5 The LCSW must refrain from supervising in areas outside his/her realm of competence. Statutory Authority: 24 Del.C. §§3901, 3906(1)(6)(9), 3913, 3915.

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## **DIVISION OF PROFESSIONAL REGULATION GAMING CONTROL BOARD**

Statutory Authority: 28 Delaware Code,  
Section 1503 (28 Del.C. 1503)

The Board proposes a new section 1.03(10) to the existing Bingo Regulations. The amendment would require the bingo applicant to provide full and fair description of the prize to be awarded and appraised value of the prize. The amendment would also permit the Board to require an independent appraisal of the prize.

Copies of the existing Bingo Regulations and the

proposed regulation as amended are attached. The public may obtain copies of the proposed regulations from the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. The contact person at the Board is Denise Spear and she can be contacted at (302) 739-4522 ext. 202. The Board will accept written comments from the public beginning March 1, 2000 through April 5, 2000. A public hearing will be held at the Delaware Gaming Control Board, 2<sup>nd</sup> Floor Conference Room, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE on April 6, 2000 at 12:00 p.m.

### 1.03 Bingo Licenses

(1) Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

(2) The Board may issue a license only after it determines that:

(i) The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

(ii) The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

(iii) The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

(iv) The proceeds are to be disposed of as provided in the State Constitution and statutes.

(v) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

(3) The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

(4) If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

(5) In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may

grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

(6) No license shall be effective for a period of more than one year from the date it was issued.

(7) No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

(8) No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

(9) No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July, 14, 1998 whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998).

(10) The license application shall contain a full and fair description of the prize and the appraised value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

**DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

**THE FOLLOWING PROPOSED REGULATORY CHANGES  
WILL BE PRESENTED AT THE STATE BOARD OF  
EDUCATION MEETING, THURSDAY, MARCH 17, 2000.**

**EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)****DELAWARE LICENSURE FOR TEACHERS  
HOLDING NATIONAL BOARD FOR  
PROFESSIONAL TEACHING STANDARDS  
CERTIFICATION****A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION**

The Acting Secretary of Education seeks the consent of the State Board of Education to adopt the regulation Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification. This regulation permits the Department of Education to grant licensure to persons who hold a current certificate from the National Board for Professional Teaching Standards (NBPTS) by waiving the pre-licensure requirements of Chapters I, II, and III of the General Regulations of the *Manual for Certification of Professional Public School Personnel*, including the PRAXIS I requirement. The applicant must still comply with the application process requirements of Chapter IV of the same document.

**C. IMPACT CRITERIA**

1. Will the new regulation help improve student achievement as measured against state achievement standards?

The new regulation deals with teacher certification procedures, not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education?

The new regulation addresses certification, not equity issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected?

The new regulation addresses certification, not students' health and safety issues.

4. Will the new regulation help to ensure that all

students' legal rights are respected?

The new regulation addresses certification issues, not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the new regulation?

No there is not a less burdensome way of addressing the purpose of this new regulation.

10. What is the cost to the state and to the local school boards of compliance with the regulation?

There is no additional cost to the state and local boards for compliance with this regulation.

**Delaware Licensure for Teachers Holding National  
Board for Professional Teaching Standards Certification**

1.0 An applicant who holds a current certificate from the National Board for Professional Teaching Standards (NBPTS) shall comply with the application process requirements of Chapter IV of the General Regulations of

the Manual for Certification of Professional Public School Personnel. The pre-licensure requirements contained in Chapters, I, II, and III of the General Regulations of the Manual for Certification of Professional Public School Personnel are waived for such an applicant. The Department will determine the appropriate state certificate(s) to be issued based upon the national certifications held by the applicant.

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**EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)**

**SCHOOL TRANSPORTATION AIDES**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION**

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the School Transportation regulations by adding a statement about school transportation aides to Section 19, as 19.10 School Transportation Aides. This amendment is necessary because references to school transportation aides in the existing *Administrative Manual: Programs for Exceptional Children* and in the *Handbook of Personnel Administration for Delaware School Districts* are being amended and recommended for inclusion in the School Transportation regulations.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation addresses school transportation aides, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses school bus aides, not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation does help to ensure the safety of children with disabilities.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation does support the needs of children with disabilities as participants in the school transportation program.

5. Will the amended regulation preserve the necessary

authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amendment?

There is not a less burdensome method for addressing the purpose of the amendment.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state and to the local boards for compliance with the amended regulation.

**Section 19 Of The School  
Transportation Regulation As Amended**

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60)

miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation

reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

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## EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

### Children With Disabilities

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations on Children with Disabilities from the *Administrative Manual: Programs for Exceptional Children*, July 1993, amended August 1993, and June 1996. The amendments serve two major purposes: isolate the DOE regulations from the Federal regulations and from the *Del. C.* and reflect the changes in the DOE regulations that are required by the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). These amendments complete the revision process begun in January by addressing changes in the following four areas:

Interagency/Special Programs  
Funding  
Other State Agency Responsibility  
Children in Private Schools

It is anticipated that the two sets of amendments will be merged together and along with comments presented to the State Board as a single revised document at the April meeting of the State Board of Education.

The technical assistance document will now be known as the *Administrative Manual for Special Education*

*Services.*

### C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations are designed to improve services for children with disabilities so that they can raise their performance on the state achievement standards.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations help insure that students with disabilities have an equal opportunity for an education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations will ensure that legal rights of students with disabilities are protected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school levels?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school levels to the same degree as the current regulations.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations reflect the requirements of IDEA and do not place any more reporting or administrative requirements or mandates upon decision makers at the local board and school levels than the existing regulations.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations are consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

9. Is there a less burdensome method for addressing the purpose of the regulation?

Federal legislation, the Individuals with Disabilities Education Act, (IDEA) requires that the Department of Education put these regulations in place.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

The amended regulations do not increase the present costs required to implement the IDEA.

### **AS AMENDED Children With Disabilities**

#### 18.0 Interagency/Special Programs

18.1 Interagency and Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, inter-district or interagency programs shall be considered within least restrictive environment requirements.

18.2 Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence.

18.2.1 The agreement may be initiated by the LEA or the SEA.

18.2.2 The SEA shall be a party to the agreement when the services are provided through a special school or program approved by the State Board of Education.

18.2.3 Each Interagency Agreement shall include the:

18.2.3.1 Title of the agreement;

18.2.3.2 Parties involved and their authority to provide special education and related services;

18.2.3.3 Purpose of the agreement;

18.2.3.4 Roles and responsibilities of each agency, including access to records and transfer procedures, implementation, dissemination, and training activities, and funding amounts and sources;

18.2.3.5 Reauthorization schedule and negotiation procedures;

18.2.3.6 Procedures to resolve disputes regarding program and fiscal issues; and

18.2.3.7 Signature and title of each party's authorized administrator.

18.3 Responsibility for Placement in Interagency Programs

18.3.1 For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures including:

18.3.1.1 Setting the date, time, and place of all meetings;

18.3.1.2 Chairing, designating, or agreeing upon a chairperson for all meetings;

18.3.1.3 Communicating the name of the child to be discussed; the date and place of meeting to individuals involved;

18.3.1.4 Receiving all requests for review and appeal; and

18.3.1.5 Communicating recommendations of staffing to all appropriate staff.

18.3.2 When it is suspected the child's need for special education can only be met in an inter-district/interagency program, then an IEP meeting shall be arranged by the district of residence. The following procedures for an IEP meeting shall be followed:

18.3.2.1 Representatives of the inter-district/interagency program shall participate in the IEP meeting.

18.3.2.2 The district of residence shall be a member of the child's IEP team.

18.3.2.3 Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's district of residence.

19.0 Special Programs for Children with a Visual Impairment: Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented through an interagency agreement.

20.0 Special Programs for Children who are Deaf and Hard of Hearing: The State Committee for the Deaf and Hard of Hearing shall be established by the Director of the Delaware Programs for the Deaf and Hard of Hearing and the Deaf/Blind in conjunction with the Department of Education.

20.1 The Committee shall provide a means for determining eligibility, program development, and coordination that is unique for the low incidence group of children with disabilities whose major disability is hearing loss.

20.1.1 Complete minutes of the Committee meetings shall be sent to the Department of Education.

21.0 Special Programs for the Children who are Deafblind: The Margaret S. Sterck School, Delaware School for the Deaf (DSD), located in the Christina School District,

shall have administrative responsibility for providing services to the deafblind program.

21.1 The DSD shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.

22.0 Special Programs for Children with Autism:

22.1 Definitions of terms applicable only to special programs for children with autism.

22.1.1 Behavior Management Procedure means any procedure used to modify the rate or form of a target behavior.

22.1.2 Behavior Management Target means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

22.1.3 Emergency Intervention Procedure means any procedure used to modify unpredictable and dangerous behavior management objectives/targets, e.g., self-injurious behaviors, physical aggression toward others, destruction of property.

22.1.4 Ethical Use means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

22.1.5 Informed Consent means knowing and voluntary consent by the parent(s) or parent(s) or guardian, based upon a thorough explanation by the program staff member supervising the case-by-case Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

22.1.6 Least Restrictive Procedure means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

22.1.7 School means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

22.1.8 Parent means any parent, surrogate parent or legal guardian.

22.1.9 Accepted Clinical Practice means any behavior management procedure or treatment that has been published in referenced (peer-reviewed) journals or similar professional literature.

22.2 The Statewide Monitoring Review Board

(SMRB) shall be established by the Director of the Delaware Autistic Program (DAP, created under Section 1302, *Delaware Code*) in conjunction with the Department of Education.

22.2.1 The purpose of the Board shall be to review the special education and related services needs and program of children with autism for whom DAP is responsible, including children with autism whose placement in private facilities has been authorized by the Secretary of Education, and to make recommendations for program improvement.

22.2.2 The Board shall consist of the following members:

22.2.2.1 Director: Director of DAP;

22.2.2.2 Education Associate: Exceptional Children Programs (responsible for DAP);

22.2.2.3 Program Coordinator of DAP;

22.2.2.4 Representative: Staff person from each DAP center having a program serving children with autism;

22.2.2.5 Representative: Local Education Agency (based upon the meeting agency);

22.2.2.6 Representative: Public and Private Agencies (based upon the meeting agenda);

22.2.2.7 Representative: Medical/health professional (based upon meeting agenda);

22.2.2.8 Representative: Division of Vocational Rehabilitation (based upon meeting agenda);

22.2.2.9 Representative: Community-based Vocational Agency (Private Sector/based upon meeting agenda);

22.2.2.10 Representative: Community-based Vocational Agency (Private Sector/based upon meeting agenda);

22.2.2.11 Representative: Early Childhood Development Specialist (Private Sector/based upon meeting agenda);

22.2.2.12 Representative: Staff person from an in-State or out-of-State program serving children with autism;

22.2.2.13 Representative: Non-voting public representative nominated annually by the Statewide Parent Advisory Committee (SPAC) and who does not have a child enrolled in DAP.

22.2.3 Board Procedures

22.2.3.1 The Chairperson of the Board shall be the Director of DAP.

22.2.3.2 Decisions of the Board shall be determined by a majority vote of the members present.

22.2.3.3 Four or more members present shall constitute a quorum.

22.2.3.4 Oral or written notice of meeting shall be at least 7 days in advance unless unanimous consent shall otherwise permit.

22.2.3.5 The Chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled monthly contingent upon agenda items.

22.2.4 The SMRB shall discharge its responsibilities in accordance with I.D.E.A. and the *Administrative Manual for Special Education Services*. The SMRB shall function in an advisory capacity; and procedural safeguards guaranteed to children with autism, their parents, educational surrogate parents, or guardians and to local school districts or agencies shall not be diminished by the activities of the SMRB. Specific responsibilities include:

22.2.4.1 Reviewing, at least annually, the identification, evaluation, educational program and placement of each child with autism and the provision of a free appropriate public education for children with autism;

22.2.4.2 Recommending appropriate services and/or programs necessary for children with autism in Delaware;

22.2.4.3 Assisting local education agencies and other appropriate agencies in implementing SMRB recommendations;

22.2.4.4 Developing and annually reviewing SMRB policies and procedures;

22.2.4.5 Recommending solutions to disputes within or between districts or agencies;

22.2.4.6 Submitting an annual report by September 1 of each year to the administering school district, Department of Education, and the State Board of Education that shall include the findings and recommendations of the non-voting public representative.

22.2.5 Copies of the minutes of the SMRB meetings, including recommendations made by the SMRB, shall be sent to the Department of Education.

22.2.6 A copy of pertinent portions of the reviews and recommendations pertaining to the identification, evaluation, and educational program and placement of each autistic child and the provision for a free appropriate public education to such children shall be sent to the appropriate parents and school district or agency.

22.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.

22.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

22.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

22.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

22.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist

of one representative elected annually from each local education agency PAC.

22.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

22.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

22.4.3 A current statewide membership list shall be provided to all parents, surrogate parents, or legal guardians.

22.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

22.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autistic Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

22.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

22.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autistic Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

22.5.2.1 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

22.5.3 Peer Review Committee (PRC) Responsibilities

22.5.3.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination.

22.5.3.1.1 A quorum shall consist of a majority of the Committee.

22.5.3.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

22.5.3.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. Monthly review shall continue until said procedure has been discontinued or PRC votes otherwise. This review may be held jointly with HRC.

22.5.3.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

22.5.3.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant damage to property, and/or a significant reduction of learning.

22.5.3.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, case-by-case review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

22.5.3.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

22.5.3.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

22.5.3.6.1 These minutes shall be submitted within two weeks of each meeting.

22.5.3.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

22.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Autistic Program Monitoring Review Board.

22.6.1 Purpose: The purpose of the HRC shall be to review the ethical and child rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

22.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

22.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

22.6.4 Human Rights Committee Responsibilities

22.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the

proposed use of the behavior management procedure within seven days of the PRC chairperson's notification to the HRC chairperson of PRC's recommendations.

22.6.4.1.1 A quorum shall consist of a majority of the Committee.

22.6.4.1.2 This review, however, may be held jointly with the PRC.

22.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

22.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

22.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

22.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

22.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

22.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

22.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

22.7.1.1 Without further PRC/HRC review during the year approved;

22.7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

22.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

22.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

22.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended;

22.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

22.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

22.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

22.7.4.1 Notice shall be given to parents of

children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

22.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

22.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/HRC annual review at least one month prior to the review date.

22.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

22.7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

22.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

22.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

22.7.7.2 Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

22.7.8 Have access to the educational records of any child with autism for purposes of 22.5.1 and 22.6.1 of this section.

22.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

22.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

22.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

22.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

22.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

22.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

22.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

22.7.9.2 After reviewing each behavior

management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

22.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

22.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

22.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

22.7.9.5 Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

22.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

22.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

22.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

22.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

22.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

22.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

22.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

22.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

22.7.9.7.2 Whenever a proposal is

recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

22.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

22.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

22.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

22.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

22.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

22.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 22.7.7.

22.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

22.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

22.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

22.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

22.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially

equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

22.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

22.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

22.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

### 23.0 Students in Need of Unique Educational Alternatives

23.1 Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources/programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs.

23.1.1 The Secretary of Education shall approve children for Unique Educational Alternative support and the type of Unique Educational Alternative Support to be provided when such support is necessary to provide special education and related services to a child with a disability.

23.1.2 If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.

23.1.3 Such approval of unique educational alternatives shall be for no more than a one-year period, ending no later than August 31 of the year in which the child is to be enrolled.

23.2 Except as otherwise provided by the General Assembly in the Budget Act. The Department of Education is required to convene the Interagency Collaborative Team (ICT) to review the expenditures for new placements of students in need of Unique Educational Alternatives.

23.2.1 The Interagency Collaborative Team (ICT) membership shall consist of:

23.2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;

23.2.1.2 Division Director, Family Services of DSCYF;

23.2.1.3 Division Director, Division of Youth

Rehabilitation Services of DSCYF;

23.2.1.4 Division Director, Division of Mental Retardation of DHSS;

23.2.1.5 Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS;

23.2.1.6 Director of the Office of the Budget, or designee;

23.2.1.7 Controller General or designee;

23.2.1.8 Director, Exceptional Children's Group, DOE, who will serve as Chair;

23.2.1.9 Associate Secretary, Curriculum & Instructional Improvement, DOE.

23.2.2 A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to represent them on the Interagency Collaborative Team (ICT) only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

23.2.3 The Interagency Collaborative Team (ICT) shall invite to its meetings: a representative of a responsible school district for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

23.2.4 The Interagency Collaborative Team (ICT) shall:

23.2.4.1 Review existing assessments of new referrals;

23.2.4.2 Prescribe, if required, additional assessments for new referrals;

23.2.4.3 Review proposed treatment plans of new referrals;

23.2.4.4 Recommend alternatives for treatment plans of new referrals;

23.2.4.5 Coordinate interagency delivery of services;

23.2.4.6 Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

23.2.4.7 If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

23.2.4.8 If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

23.2.5 The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

23.2.5.1 New referrals will be assessed in the interagency manner described above.

23.2.5.2 The Interagency Collaborative Team (ICT) may accept and review cases initiated by other

agencies, but in all cases, the school district of residence must be involved in the review.

23.2.5.3 Cases reviewed by the Interagency Collaborative Team (ICT) will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

23.2.5.4 Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

23.2.6 The Interagency Collaborative Team (ICT) shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and the Controller General by February 15 of each year. The report shall address the status of items addressed in the previous February ICT Annual Report.

23.3 Interagency Collaborative Team (ICT) Review Criteria

23.3.1 The Interagency Collaborative Team (ICT) shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria:

23.3.1.1 A school district or other public agency support/program is either not available or is not adequate.

23.3.1.2 The school district certifies that the school district cannot meet the needs of the child with existing resources and/or program.

23.4 Procedures for Districts Seeking to Place Students in Unique Educational Alternative Settings

23.4.1 The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting.

23.4.2 The chairperson of the Interagency Collaborative Team shall be contacted by telephone by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

23.4.3 The district level IEP Committee shall meet and determine if the child's need for special education and related services can be met within the existing resources/programs available to the district.

23.4.3.1 Representatives of all agencies involved with the child shall be invited to attend this meeting.

23.4.4 The district shall submit an application to the Chair of the ICT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs.

23.4.5 The application will include:

23.4.5.1 Current and other relevant assessment information:

23.4.5.2 A historical summary of all placements and/or major interventions and support services that have been provided to the student;

23.4.5.3 A current IEP;

23.4.5.4 A concise statement of the needs that cannot be addressed through existing recourses or programs;

23.4.5.5 A list of all agencies and resources that are currently supporting the child and the family; and

23.4.5.6 An Interagency Release of Information Form.

23.5 Procedures for the ICT

23.5.1 The ICT shall review the application at its next monthly meeting.

23.5.2 Parents and representatives of all involved agencies shall be invited to participate in the meeting.

23.5.3 Recommendations of the Interagency Collaborative Team shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The ICT may:

23.5.3.1 Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and/or review of additional programs/resources that the local team had not considered;

23.5.3.2 Request for additional information shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting and as soon as the additional information is available, the case shall be brought back to the ICT for further review.

23.5.3.3 Recommend approval and agree that the child has needs that cannot be addressed through existing programs/resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

23.5.3.4 Recommend rejection and ask the local team to use existing programs/resources to meet the educational needs of the children.

23.5.4 Final recommendations of the ITC shall be shared in writing with the school district, parents and other agency staff involved in the case within five business days.

23.5.4.1 If the recommendation is for approval, the local team shall develop the specifics, including costs, of the Unique Educational Alternative.

23.5.4.2 The final plan, with costs, shall be submitted to the Chair of the ICT.

23.5.4.3 The Chair shall submit the recommendations for approval to the Secretary of Education.

23.5.4.4 A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary of Education for final action.

23.5.4.5 The parent, district superintendent,

the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary of Education, following the action.

#### 23.6 Financial Aid for Unique Educational Alternatives

23.6.1 Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line.

23.6.1.1 The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school district are recommended by the Interagency Collaborative Team (ICT).

23.6.2 Financial aid for children with disabilities approved for private placement by the Department of Education shall include maintenance, transportation and tuition.

23.6.2.1 The Department of Education shall pay 85% of the private placement costs and the local school district shall pay 15% of the private placement costs.

23.6.2.2 The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the *Delaware Code*.

23.7 Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval.

23.7.1 Such an independent placement in a private or public out-of-state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.

23.8 School District/Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for private placement.

#### 23.8.1 District Certification and Documentation

23.8.1.1 The local school district certification that the child is eligible for private placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education.

23.8.1.2 Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s).

23.8.1.3 Such documentation shall include report(s) of the appropriate specialist(s), depending upon the

nature of the child's disability.

23.8.1.4 Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.

#### 23.9 Responsibility for Individualized Education Program

23.9.1 The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility.

23.9.2 The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

23.9.3 After a child with a disability enters a private school or facility; any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency.

23.9.4 If the private school or facility initiates and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

23.9.5 District of Residence: The referring district and fiscal agency for a child in private placement is the child's district of residence.

23.9.6 Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.

23.10 State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private programs, the Department of Education shall have the authority to:

23.10.1 Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires.

23.10.2 Develop regulations that define the standards by which private schools and facilities may be approved to serve students with disabilities, and a schedule for reevaluation.

23.10.3 Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a student with disability.

23.10.4 Provide an opportunity for those private schools or facilities to participate in the development and

revision of State standards, which apply to them.

24.0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

24.1 Documentation of DOE activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

24.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

24.2 The DOE shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

24.3 The DOE shall distribute regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

24.4 Nothing in the Individuals with Disabilities Education Act, as amended, shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

24.5 Compliance Monitoring: The DOE shall carry out a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

24.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

24.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

24.5.3 Adoption and use of a method by which the DOE formally directs that each deficiency identified in

program operations be corrected by the appropriate agency.

24.5.4 Adoption and use of a method by which the DOE enforces State and federal legal obligations by imposing appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the DOE determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the DOE shall:

24.5.4.1 Make no further payments to the district or agency until the DOE is satisfied that there is no longer any failure to comply with the requirement; or

24.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA-B payments;

24.5.4.3 Or both.

24.5.5 Any school district or other public agency receiving a notice from the Department of Education under 24.5.4 is subject to public notice provisions as required under 34 CFR 300.196.

24.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

24.6 Scope of Department of Education Compliant Monitoring Authority

24.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

24.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

24.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

24.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children who are disabled administered within the State.

24.7 The Department of Education Methods of Monitoring shall include:

24.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

24.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

24.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

24.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

24.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

24.7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

24.7.7 Written documentation of each monitoring activity through correspondence and reports;

24.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

24.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

24.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

24.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

24.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

24.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

24.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

24.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

24.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

24.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

24.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

24.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

24.7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:

24.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

24.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

24.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

24.8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

24.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

24.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

24.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

24.8.3.1 The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

24.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

24.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

24.8.4 On-going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.

24.8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

24.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

24.8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

24.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, and/or organization responsible for carrying out the programs.

24.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

24.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of

education and related services for children with disabilities.

24.8.7.3 The Department of Education shall be responsible for the following dissemination activities:

24.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

24.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

24.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

#### 24.9 Finance/Administration

24.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

24.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

24.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

24.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

24.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

24.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.

24.9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.

24.9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other

applicants.

24.9.3.6 An applicant from a district or agency shall include the following information:

24.9.3.6.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

24.9.3.6.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

24.9.3.6.3 The basis the applicant used to select the children.

24.9.3.6.4 The manner and extent to which the applicant complied with Section 76.652 (consultation).

24.9.3.6.5 The places and times the children will receive benefits under the program.

24.9.3.6.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

24.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

24.9.4.1 The specific procedures used in order to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

24.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation of \$558,000, the LEA grant would be reduced at a rate of \$558.00 for each child determined to have been misclassified.

24.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

#### 24.10 Other SEA Responsibilities

24.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

24.10.1.1 Incorporate within its CCMS process a series of questions about the Childfind activities

which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies:

24.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process:

24.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

#### 25.0 Funding Issues for Children with Disabilities

25.1 Reimbursement under the Unit System: Eligibility of the local education agencies to receive reimbursement under the unit system is contingent upon:

25.1.1 The proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and Sections 2.0, 3.0, and 4.0 of these regulations; and

25.1.2 A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.

25.2 Aides Positions for Services to Children with Disabilities (as authorized under 14 *Del. C.*, Section 1324).

25.2.1 All paraprofessionals in such positions shall work under the supervision of teachers.

25.2.2 The following positions may be authorized:

25.2.2.1 Trainable Mental Disability Unit: One classroom teacher, or in lieu of a teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

25.2.2.2 Severe Mental Disability Unit: One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

25.2.2.3 Autism Unit: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

25.2.2.4 Physical Impairment Unit: One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

25.2.2.5 Hearing Impairment Unit: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school.

25.2.2.6 Deaf/Blindness Unit: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days.

25.2.2.7 Intensive Learning Center Unit: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

25.2.3 The use and ratio of aides to teachers shall be dependent upon the rationale developed by the agency.

25.3 School Nurses (as authorized by 14 Del. C., Section 1310)

25.3.1 A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice.

25.4 Other Positions for Services to Children with Disabilities

25.4.1 Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

25.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.

25.4.3 An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10) units.

25.4.4 A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

25.4.5 Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

**REGULATIONS FROM THE HANDBOOK OF  
PERSONNEL ADMINISTRATION FOR DELAWARE  
SCHOOL DISTRICTS**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION**

The Acting Secretary of Education seeks the consent of the State Board of Education to amend seven regulations from the Handbook of Personnel Administration for Delaware School Districts. The original seven regulations have been reduced to three regulations: Credit for Experience for Administrators, Teachers and Secretaries; School Food Service Employees; and Substitutes. The regulations for School Food Service Employees and for Substitutes are still separate regulations. The regulations for Administrative and Supervisory Personnel, for Classroom Teachers, Specialists and Therapists, and for Secretaries have been combined and the regulations for School Nurses and for Attendants and Aides have been placed in the Special Education Regulations and in the Transportation Regulations.

Administrative and Supervisory Personnel, page 11-2, has been amended to delete the first three paragraphs, which are found in the Del. C. The fourth paragraph on credit for experience has been placed in the amended regulation Credit for Experience for Administrators, Teachers and Secretaries.

Classroom Teachers, Specialists and Therapists, pages 11-6 through the first five lines of page 11-10, (The balance of page 11-10 and page 11-11 have already been acted on by the Secretary and the Board) has been amended to delete all of the paragraphs that are found in the Del. C. The last paragraph on page 11-6, although not in Del. C. in 1981 when adopted as State Board policy, is now found in 14 Del. C., Section 1312(c.) and has been deleted. Gifted and Talented referred to on page 11-9 is deleted as it is now found in 14 Del. C., Section 1716(c) Academic Excellence Units. The third paragraph from the top of page 11-6 on teacher experience has been updated and is part of the amended regulation, Credit for Experience for Administrators, Teachers and Secretaries.

School Nurses, page 11-12, has been amended to delete all paragraphs but the fifth paragraph which deals with units for students with disabilities. The fifth paragraph is now in the amended Children with Disabilities Regulations, Section 25.3. The other paragraphs are deleted because they are addressed in the Del. C.

Secretaries, pages 11-13 and 11-14, has been amended to delete all paragraphs but the first one which addresses allowable experience toward salary calculations. This paragraph has been placed in the amended regulation Credit for Experience for Administrators, Teachers and Secretaries

and now allows one year's experience for each creditable year of experience in private business, public schools or other governmental agency. The new wording removes the word "full" and replaces it with "creditable." The other paragraphs were deleted because they are found in the Del. C.

School Food Service Employees, pages 11-20 through 11-23, has been amended to change the word "full" year of experience to "creditable" in the second line under Experience. The sections of the regulation under Allocation, Salaries, Months of Employment, Determination of Employee Staffing and Salary Formula, Fringe Benefits, Food Service Training and Food Service Management Technology Program have been amended to remove the Del. C. references and the technical assistance statements and to bring the language in line with present Del. C. and Department of Education procedures where appropriate. The Health Regulations are deleted from this regulation because school employees are covered under existing regulations on Tuberculin Tests and Physical Examinations.

Attendants and Aids, pages 11-24 - 11-25, has been amended to delete the Del. C. references in the Eligibility for Employment, Allocation, Salaries and Months of Employment sections and to then place the regulations concerning classroom aides for students with disabilities in the amended Children with Disabilities Regulations, Section 25.2. The regulations concerning transportation aides for students with disabilities are placed in the Transportation Regulations, Section 19.10. The last section Job Definition is being deleted from the regulations, as job descriptions are no longer required.

Substitutes, pages 11-26 and 11-27, has been amended to delete the Del. C. references and to change the existing section 1. f. by deleting the reference to "New Directions" and referring to "Department of Education initiated committee work and project assignments." The other parts that define when substitutes can be used and how they are paid remain the same with some updating of the wording.

## C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations address personnel issues, not student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address personnel issues, not equitable education issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address personnel issues,

not students' health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address personnel issues, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision-making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulations?

The regulations are required in order to provide statewide consistency in personnel matters.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no additional cost associated with implementing these amended regulations.

**AS APPEARS IN THE HANDBOOK OF PERSONNEL  
ADMINISTRATION FOR DELAWARE SCHOOL  
DISTRICTS**Administrative and Supervisor PersonnelExperience

In determining salary in accordance with §1305, "years of experience" means years of service in any public school or regularly organized private school. Ninety-one days in any school year shall constitute 1 year of experience, but not more than 1 year of experience may be credited for any 1 calendar year. Years of service in the armed forces shall also be counted as years of experience in accordance with the rules and regulations adopted by the State Board of Education in this respect. §1312(a). (See State Board of Education Rules in Section I.)

In the case of personnel whose salaries are based wholly or in part upon §§ 1306, 1307, 1308, 1309, 1311, 1321 and 1322 of this title, experience shall be evaluated by the State Board of Education, taking into consideration the number of months and the nature of the services rendered. §1312(c). In practice, this evaluation is done by the school district, except in cases where the school district requests assistance from the State Department of Public Instruction.

One assistant superintendent, 1 director, 1 administrative assistant and 1 supervisor in each district having such employees assigned duties in the areas of business, finance or purchasing may be credited with years of experience on the salary schedule set forth in § 1305 for years of experience in public or private business in accordance with rules established by the State Board of Education. §1321(g).

No credit for part-time employment will be allowed. (State Board of Education regulation, November 12, 1970)

Classroom Teachers, Specialists And TherapistsExperience

Years of experience in determining salary in accordance with §1305 of this title means years of service in any public school or regularly organized private school. Ninety-one days in any school year shall constitute one year of experience, but not more than one year of experience may be credited for any one calendar year. Years of service in the armed forces shall also be counted as years of experience in accordance with the rules and regulations adopted by the State Board of Education in this respect. §1312(a).

Credit is given for experience out of the state. §1312(a).

Days taught as a substitute or as a teacher aide may not be used toward credit for experience; however employment as a teacher on a regular part time basis may be used toward credit for experience. As used in this instance, a "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for a least 9

months during a period of 12 consecutive months.

For a person employed as a teacher of Trades and Industries, or as a Coordinator of Distributive Education, work experience shall be allowed on a year for year basis for full-time work experience in the trade of the teaching subject for those years of work experience beyond years counted toward qualification for certification under rules and regulations of the State Board of Education, specified in the Manual of Certification of Professional School Personnel. One hundred thirty-one (131) working days in any school year shall constitute one year of work experience but not more than one year of experience may be credited for any one calendar year. §1312(b). For purposes of determining salary, experience/degree equivalents are specified in § 1301(3).

For persons employed in the specialized areas of school psychometrist; school psychologist; speech and hearing teacher (speech therapists); school occupational therapist; school physical therapist, and other areas of specialty which are similarly recognized, work experience shall be allowed on a year-for-year basis for full-time work experience in any public school. Such work experience shall also be allowed for full-time work in regularly organized private school, hospital, private medical practice, agencies of states and cities administering public funds, or a branch of the armed services of the United States. The credited work experience must have been in the area of educational specialty for which the individual is currently employed in the public schools. (State Board of Education regulation, November 19, 1981, effective July 1, 1982.)

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Term of Employment, Position/Unit Authorization and Salary Schedules

Delaware Code, Title 14 Sections

Months AuthorizationSalary Schedules

\*

Classroom Teachers10\*\*1704,17051305(a)

Psychologists101321(e)(5)1305(a)

For Autistic121332(b)(2)1305(a)

Speech & Hearing Teachers101321(e)(6)1305(a)

Visiting Teachers101321(e)(7)1305(a)

Driver Education10\*\*\*1321(e)(8)1305(a)

Physical Therapists

For SMH12 1321(e)(11)1305(a)

For Orthopedic H.101321(e)(17)1305(a)

Occupational Therapists

For SMH12 1321(e)(12)1305(a)

For Orthopedic H.101321(e)(17)1305(a)

Speech Therapists

For SMH12 1321(e)(13)1305(a)

For Orthopedic H.101321(e)(17)1305(a)

~~For Autistic 121332(b)(1)1305(a)  
Therapist & Special Service 121321(e)(14)1305(a)  
Basic Skills Specialists 101321(e)(15)1305(a)  
Interpreter-Tutor (Sterk) 101331(b)1331(b)  
Director-Specialist (Autistic) 121332(a)1332(a)  
Related Services Specialist - 1716A1305(a)  
Gifted & Talented Units - 1716B1305(a)  
Disruptive Student Units - 1716C~~

~~\* Teachers are employed for ten (10) months which shall mean a total of 185 days. The 185 days shall be full work days with 180 days devoted to actual school sessions and 5 days devoted to inservice sessions and other programs approved by the State Board of Education. §1305(e). (See School Calendar in Section 10 of this handbook.)~~

~~\*\* Vocational agriculture teachers may be employed for 12 months. §1321(j).~~

~~\*\*\* Driver education teachers may be employed during summer months with approval of the State Board of Education; however, the district may not exceed its unit entitlement during any fiscal year. §1321(e)(8).~~

#### Allocation

~~Classroom Teachers - The number of teachers paid from State Division I funds cannot exceed the number of units in the district as of the last day of September that school year. School districts may employ additional teachers from State funds appropriated in Division III as provided in § 1705(b).~~

~~Regular units for 1984-85 (§1703) are:~~

~~Kindergarten - 40 pupils  
Elementary (1-3) - 19 pupils  
Elementary (4-6) - 20 pupils  
Secondary (7-12) - 20 pupils~~

~~Psychologists - one for each full 150 state units of pupils (§1321(e)(5)) or fractional part of the first unit (§1321(f)). In a school district designated by the State Board of Education to administer a statewide program for autistic pupils, one psychologist for each six state units or fractional part of six units of pupils (§1332(b)(2)).~~

~~Speech and Hearing Teachers - one for each full 140 state units of pupils (§1321(e)(6)) or fractional part of the first unit (§1321(f)).~~

~~Visiting Teachers - one for each full 250 state units of pupils (§1321(e)(7)) or fractional part of the first unit (§1321(f)).~~

~~Driver Education - one for each group of 125 tenth grade pupils or 1/5 of a teacher for each group of 25 tenth grade pupils in the district (§1321(e)(8)).~~

~~Physical Therapists - one for each group of 50 children identified as severely mentally retarded (SMR) (§1321(e)(11)) or fractional part of the first unit (§1321(f)).~~

~~In a school district authorized by the State Board of Education to administer a special school for orthopedically handicapped pupils, one physical therapist for each 30 such pupils and fractional part above the first full unit (§1321(e)(17)).~~

~~Occupational Therapists - one for each group of 50 children identified as severely mentally retarded (SMR) (§1321(e)(12)) or fractional part of the first unit (§1321(f)). In a school district authorized by the State Board of Education to administer a special school for orthopedically handicapped pupils one occupational therapist for each 40 such pupils and fractional parts above the first full unit (§1321(e)(17)).~~

~~Speech Therapists - one for each group of 50 children identified as severely mentally retarded (SMR) (§1321(e)(13)) or fractional part of the first unit (§1321(f)). In a school district authorized by the State Board of Education to administer a special school for~~

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~~orthopedically handicapped students, one speech/language clinician for each 50 such pupils and fractional part above the first full unit (§1321(e)(17)). In a school district designated by the State Board of Education to administer a statewide program for autistic pupils, one speech and language therapist for each three state units or fractional part of three units of pupils (§1332(b)(1)).~~

~~Therapists and Special Services - 1/3 of a specialist for each unit of deaf-blind children, or a fractional parts of units (§1321(e)(14)).~~

~~Basic Skills Specialists - one for each 530 pupils enrolled in a school district, Grades K-12, or a fractional part of 530 pupils (§1321(e)(15)).~~

~~Director Specialist - one for 8 or more units of autistic children in a school district designated by the State Board of Education to serve as administrator of the statewide program for autistic children (§1332).~~

~~Related Services Specialists - one unit per 30 units special education students, K-12, except for those identified as severely mentally handicapped, hearing impaired, autistic, or deaf-blind, or orthopedically handicapped, or fractional part of 30 units (§1716A).~~

~~-one for State Board of Education for autistic~~

~~Gifted and Talented - one per 600 regular students enrolled in a district, K-12, or fractional part of unit, excluding students counted as handicapped (§1716(B)(a)). These units have not been fully funded, the 1982 Budget Act provides funding for 1 unit per 1800 regular students.~~

~~Disruptive Student Units - one funding unit for each enrollee in a school district, grades K-12. These funds may be used for expenditures under Division I or Division II for purchase of services or supplies or under Division III in~~

teaching disruptive pupils (§1716C):

Special Staff — Sterk School — In addition to staff otherwise authorized, Sterk may employ:

—one speech therapist for 10 months for each 6 units or fraction of 6 units

—one psychologist for a 12 month period for each 10 units or fraction of 10 units

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—one resource teacher for a 10 month period for each 10 units or fraction of 10 units

—one interpreter-tutor for each 4 deaf pupils in a mainstreamed program

—one preschool teacher-coordinator (§1331)

#### Regulations and Legal Provisions

Work Day — In compliance with 14 Delaware Code § 305(c), the State Board of Education defined a teacher's full work day as follows:

Teachers are engaged in a professional employment. Their salaries and hours of employment are fixed with due regard to their professional status and are not fixed upon the same basis as those of day laborers. The worth of a teacher is not measured in terms of a specific sum of money per hour. A teacher expects to and does perform a service. Extra-curricular or co-curricular activities comprise all those events and programs which are sponsored by the school and may reasonably be characterized as a supplement to the established program of studies in the classroom in order to enrich the learning and self-development opportunities of pupils. Teachers are legally bound to perform such activities as may be reasonably assigned them by the district board of education.

Therefore, a teacher's full work day is comprised of a minimum of 7 1/2 hours, inclusive of lunch, plus the amount of time required for discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (State Board of Education regulation, November 19, 1987. The effective date of the minimum 7 1/2 hours teacher work day is July 1, 1988; or when a negotiated contract that provides otherwise expires.)

Duty-Free Period Every teacher shall have, during each school day, a duty-free period of at least 30 consecutive minutes. §1328.

Delayed Certification — If all credentials have not been received by the State Department of Public Instruction within one month after beginning service, the applicant shall be paid on the substitute teachers' salary basis until he is properly certificated. The salary will then be determined on the basis of education, experience and military service, and certificate status and will be made retroactive to the time of beginning service. (State Board of Education regulation, June 14, 1972)

Sub-Standard Certification — The table below shows the salary to be paid or the deductions from salary to be made, whichever is applicable, on account of the various substandard certificates:

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#### General Certification Salary

Emergency 80% of the salary set forth for the position

Provisional 90% of the salary set forth for the position

(State Board of Education regulation, December 16, 1971)

#### Trade & Industry Certification

Emergency salary for the position minus \$400

Provisional salary for the position minus \$200

(State Board of Education regulation, June 14, 1972)

Provisional Certificate — In any case where the State portion of a salary is drawn from several sections of 14 Delaware Code, Chapter 13, or any other salary provision, the portion of the salary to be paid to persons holding the provisional certificate shall be applied to the total salary paid as authorized by any section or combination of sections in the law. (State Board of Education regulation, June 11, 1973)

#### Auxiliary Personnel

##### School Nurses

#### Experience

Years of experience in determining salary in accordance with Title 14, §1305 means years of full time service as a registered nurse employed to perform nursing duties in any public school, regularly organized private school, hospital, private medical practice, agencies of states or cities administering public funds, or a branch of the armed services of the United States. Ninety-one days in a school year shall constitute one year of experience, but not more than one year of experience may be credited for any one calendar year. Credit is given for experience out of the State. (State Board of Education regulation, October 23, 1980, effective date July 1, 1981)

The salary adjustment brought about by this change in experience requirements becomes effective as of July 1, 1981 with the increase limited to two additional years in FY 1982 and in any future fiscal year for those with acceptable experience.

#### Allocation

All nurses who hold appropriate certificates shall be paid in accordance with the provisions of Title 14, §1305

~~effective July 1, 1979. §1310.~~

~~A school district may employ personnel to be paid for 10 months per year from State funds pursuant to this section in a number equal to one for each full 40 State units of pupils, except that in schools for the physically handicapped within the district the allocation shall be in accordance with the rules and regulations adopted by the State Board of Education; provided further that each reorganized school district shall have at least one school nurse and providing that each vocational technical high school shall have a nurse. §1310.~~

~~A nurse shall be employed for eight (8) or more units of autistic, orthopedically handicapped, trainable mentally handicapped, severely mentally handicapped or a combination thereof. (State Board of Education regulation, August 17, 1972)~~

#### Personnel Policies Governing the School Nurse

~~Personnel policies, responsibilities and procedures for the school nurse are contained in The School Nurse — A Guide to Responsibilities, Department of Public Instruction, September 1981.~~

#### Secretaries

#### Experience

~~Education secretaries are allowed one year's experience for each full year of experience as a secretary in private business, public school, or other governmental agency. (State Board of Education regulation, November 12, 1970)~~

~~Although certificates are not required for secretaries, secretaries shall receive as salary the amount for which they qualify under §1308(a) plus an annual amount for additional training and upon receipt of certificates for completion of certain requirements. These are specified in the Manual of Certification of Professional School Personnel.~~

#### Allocation

~~Secretaries may be employed in a number equal to one (1) for each full ten (10) State units of pupils for the first 100 such full State units of pupils and one (1) additional for each additional full 12 State units of pupils. §1308(e).~~

~~A twelve-month secretary shall be employed in any school for the orthopedically handicapped with an enrollment exceeding 10 units. Proportionate secretarial services shall be provided for units fewer than ten. These units must be subtracted from total in school district since they cannot be counted twice.~~

~~Of the total number of secretaries allotted to a district, the local district shall classify them as follows:~~

~~(a) 12% as clerks as nearly as is mathematically possible;~~

~~(b) one administrative secretary for each superintendent, each deputy superintendent, each assistant~~

~~superintendent, and each director with the provision that each district shall have at least two administrative secretaries;~~

~~(c) two financial secretaries for each full 7,000 pupils enrolled in the district on September 30 with the provision that each district shall be entitled to at least two financial secretaries;~~

~~(d) one senior secretary for each administrative assistant and for each principal having a building with an enrollment of 800 or more pupils on September 30;~~

~~(e) the remaining entitlement as secretaries.~~

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~~The allotment of positions and specific assignment of a person to the position may or may not be the same. The formula is to be used for the purpose of calculating the district's allotment only. Assignment is to be determined at the district level. (State Board of Education regulation, August 17, 1978)~~

#### Months of Employment

~~Secretaries and clerks may be employed for twelve (12) months. §1308(a).~~

~~One twelfth (1/12th) of the salary rate shall be deducted for each month that the employee is not employed. §1308(a)(b).~~

#### School Food Service Employees

#### Experience

~~School food service employees may be granted one (1) year's experience for each full year of experience in similar employment. (State Board of Education regulation, November 12, 1970)~~

#### Allocation

~~Supervisors of school lunch may be employed in any district having four (4) or more schools with food service programs § 1321(c)(10).~~

~~School lunch managers are assigned to each school building in which there is a lunch program. §1322(a). (State Board of Education regulation, November 23, 1970)~~

#### Salaries

~~Supervisors of school lunch shall be paid at the salary schedule of "Supervisors" authorized in § 1321(c) and set forth in § 1321(c).~~

~~School lunch managers with a single lunchroom will have the salaries as set forth in § 1322(a) adjusted under the following conditions:~~

~~(a) \$200 additional shall be paid for each lunchroom in another building served from the manager's school.~~

(b) 200 less shall be paid to managers in satellite schools, defined as a school in which no basic food preparation takes place.

(c) Additional sums shall be paid for one (1) year of college, two (2) years of college, and the Bachelor's degree. (See Salary Schedules for School Lunch Managers)

According to the provisions of 63 Del. Laws, Chapter 322 (SB 606 Section 137(b), 131st G.A.) effective July 1, 1982 the State shall pay 25% of the salary rate for Cafeteria Managers as set forth in 14 Delaware Code § 1322. The remaining 75% of the salary shall be paid from local funds.

School lunch cooks, bakers, and general workers shall be paid in accordance with the salary schedules for school lunch general workers, cooks and bakers provided in Section 10 of this handbook.

School lunch cooks, bakers, and general workers are to be paid from funds derived from the local school lunch operating funds and from state funds as authorized by § 1322(d).

School lunch funds designated for wages of cooks, bakers, and general workers in the school lunch program shall be deposited with the State Treasurer. §1322(d).

#### Months of Employment

Supervisors of school lunch are employed for eleven (11) months. §1321(c)(10).

School lunch managers are employed for the ten (10) months' school year of 185 days. The work day shall be at least seven (7) hours. §1322(a).

#### Health Regulations

The Division of Public Health, Department of Health and Social Services, no longer requires food handlers to have annual chest x-rays and blood tests. Since school food service employees are also school employees, they are regulated by the State Board of Education. School service employees who are in frequent contact with pupils must have tuberculin screening test during the first weeks of employment if their tuberculin status is unknown. Anyone who is a known positive reactor need not have this tuberculin screening test. Doubtful reactors to the screening test should have the Mantoux test administered by either the school or public health nurse. Positive reactors will be referred to the public health clinic or private physician for follow-up. (State Board of Education regulation, July 19, 1973.

#### Determination of Employee Staffing and Salary Formula

School districts will determine the salaries paid to cafeteria workers as follows:

(a) School lunch general workers, cooks and bakers (except substitutes) shall be paid no less than the salaries provided in § 1322(c).

(b) Of the total number of full time workers assigned to a food preparing cafeteria, a maximum of one

may be paid as a cook and one may be paid as a baker. Satellite schools are eligible only for general workers.

(c) A minimum of 25% of the salaries prescribed in § 1322(c) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by the following formula:

(1) Seven (7) hours of labor per 100 meals determined as follows:

(a) Total number of reimbursable lunches served in the base month; plus

(b) Total number of reimbursable breakfasts served in the base month; plus

(c) Total of all other meals served in the base month determined by aggregating all income other than from (b) and (c) above and dividing that amount by the unit lunch price at each school.

(d) The number of meals prepared and served will be based on the average reported for the month of October on the monthly reimbursement claim.

(e) Each school district will submit a roster of cafeteria workers to the Department of Public Instruction with its October reimbursement claim showing names of employees, school building, classification, hourly rate, hours per day, and days per year, not exceeding 180 days. Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the formula set forth in paragraph (c) above.

(f) One-fourth of the approved salary costs as determined above will be paid from State funds.

(State Board of Education regulation, July 18, 1974)

It should be noted that the formula for the State portion of salaries for general workers, cooks and bakers of 7 hours of labor per 100 meals is a baseline standard which represents, in effect, the minimum efficiency level for which the State will appropriate salary contributions. By means of sound supervisory and management procedures leading to optimum use of labor resources, districts should routinely equal or exceed the formula. Since optimum labor utilization with the resulting reduction in labor cost to the district is both a goal of and a benefit to each district, no additional payment representing the difference between entitlement under the formula and actual salary costs will be made.

#### Fringe Benefits

Under the provisions of 63 Del. Laws, Chapter 322 (SB 606, Section 135(e), 131st G.A.) for fiscal year ending June 30, 1983, each school district employing cafeteria employees shall transfer or pay on a regularly scheduled basis, as determined by the Secretary of Finance, to the Treasurer of the State of Delaware appropriate sums for local funds to

~~cover F.I.C.A. Employer's Share, Pension Costs, for cafeteria employees. The State Treasurer shall be responsible for the administration of this subsection (c) and for the collection of other Employment Costs from non-state funds.~~

### Food Service Training Program

~~The Delaware Technical and Community College, under the sponsorship of the Department of Public Instruction, offers regularly scheduled Food Service Training classes. These classes are arranged in four units, each requiring a minimum of thirty (30) class hours. Classes are held after regular working hours, on the worker's own time. Generally, they meet late in the day. Courses are open to School Food Service workers and Day Care Center employees and are limited to 24 students.~~

### Food Service Management Technology Program

~~The Delaware Technical and Community College offers a two-year associate degree program in Management Technology for those food service workers interested in upgrading themselves with courses which grant credit.~~

~~For further details concerning the two programs described above, contact the local Delaware Technical and Community College.~~

### Attendants and Aides

#### Eligibility for Employment

~~Any school district having classes for the trainable mentally handicapped, the severely mentally handicapped, the orthopedically handicapped, or the partially deaf or hard-of-hearing, or the deaf-blind or autistic as provided in § 1703 may employ attendants or aides as required, subject to the qualifications promulgated by the certifying board. §1324(a).~~

#### Allocation

##### A. Hearing-Impaired

~~One (1) aide for each unit — pre-school through Grade 12. (State Board of Education regulation, 1977)~~

##### B. Trainable Mentally Handicapped

~~(1) Two (2) aides in lieu of a teacher, provided the number of aides does not exceed the number of teachers employed.~~

~~(2) One (1) attendant for each school bus. Attendants optional on carry-alls and station wagons, unless a special case, such as a blind or non-ambulatory pupil, requires an attendant with the vehicle. (State Board of Education regulation, August 17, 1972)~~

##### C. Orthopedically Handicapped

~~(1) One (1) attendant or aide for each unit.~~

~~(2) One (1) attendant for each school bus. Such attendants will be employed as a part of the transportation~~

~~system and will have no other school duties. (State Board of Education regulation, August 17, 1972)~~

##### D. Severely Mentally Handicapped

~~(1) One (1) classroom aide may be employed per unit.~~

~~(2) One (1) attendant for each school bus. Attendants optional on carry-alls and station wagons, unless a special case, such as a blind or non-ambulatory pupil, requires an attendant with the vehicle. (State Board of Education regulation, August 19, 1976)~~

##### E. Autistic

~~One (1) aide per unit. If they work the 11th or 12th month, they will be paid for 222 days.~~

#### Salaries

~~Attendants and aides shall be paid at the salary schedule authorized and set forth in § 1324(b).~~

#### Months of Employment

~~Attendants and/or aides are employed for ten (10) months. §1324(b).~~

#### Job Definition

~~A school district shall be required to submit a job definition for any person employed as an aide. (State Board of Education regulation, May 25, 1967)~~

### Substitutes

~~Various classes of substitutes are defined and certification requirements for each are provided in the Manual of Certification of Professional School Personnel~~

#### Salary for Teacher Substitutes

~~See Section 10 of this handbook.~~

#### Guidelines for the Payment of Teacher and Other School Employee Substitutes

~~I. Substitutes for State funded teachers may be paid from State substitute teacher funds under the provisions of:~~

~~A. Title 14, §1318 — Sick leave and absences for other reasons (only specified reasons allowable);~~

~~B. Title 29, §5524 — Eligibility for disability pension;~~

~~C. Title 29, §5933 — Leaves (sick leave not counted for absence for work-related disease or accident);~~

~~D. State Board of Education regulation — Military leave (training or duty not in excess of 15 days);~~

~~E. State Board of Education Regulation — Kindergarten Teacher Substitutes on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for 1/2 day on abbreviated days when kindergarten is scheduled.~~

~~F. State Board of education regulation Teachers attending New Directions related committee meetings, to allow teachers to participate as members of a New Directions related committee such as the Framework Commissions, School Profiles Project and New Standards Project, substitutes may be hired using state substitute teacher funding.~~

~~2. Substitutes for teachers absent under the provisions of Title 14, §1320, Deduction for Unexecuted Absence (or on approved leave without pay) shall be charged to the teacher line (09).~~

~~R 5/6/92~~

~~3. Substitutes for teachers paid from federal funds are to be paid from federal funds from the federal program involved or local funds.~~

~~4. Substitutes for teachers paid from local funds are to be paid from local funds.~~

~~5. Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds are to be paid on the same proportional basis from State substitute teacher funds.~~

~~6. Substitutes are to be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in Title 14, §1326. School districts paying more for teacher substitutes than prescribed in § 1326 shall do so from local or federal funds.~~

~~7. Substitutes for personnel other than teachers cannot be paid from State substitute teacher funds.~~

~~Note: Funds for substitutes when required for other school employees, absent for jury duty, absent prior to going on disability pension, absent because of military leave (training or duty not in excess of 15 days), or absent because of work-related disease or accident, shall be requested from the Educational Contingency Fund, and shall be based upon a Substitute Daily Rate For Other School Employees.~~

~~Note: Payment received for jury duty or worker's compensation shall be returned to the employing agency for deposit to the General Fund, Contingency Fund, or Substitute Teacher Fund as appropriate. (Approved by State Board of Education, December 11, 1975)~~

~~Substitute Daily Rate For Other School Employees~~

~~See Section 10 of this handbook.~~

~~R 5/6/92~~

**AS AMENDED**

Credit for Experience for Administrators, Teachers and Secretaries

1.0 Administrators: No credit shall be given for part time employment in Administrative and Supervisory

positions.

2.0 Teachers: Days taught as a substitute or as a teacher's aide may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

2.1 As used in this instance, a "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during a period of 12 consecutive months.

3.0 Secretaries: Secretaries are allowed one year's experience for each creditable year of experience as a secretary in private business, public school, or other governmental agency.

School Food Service Employees

1.0 Experience: School food service employees may be granted one (1) year's experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food-preparing cafeteria, a maximum of two may be paid as a cook/baker. Satellite schools are eligible for positions as set forth in 14 Del. C., Section 1322(c) state funded.

3.0 The salaries prescribed in 14 Del. C., Section 1322(e) for general workers, and cooks/bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:

3.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.3.1 The number of meals prepared and served will be based on the average reported for the month of October on the monthly reimbursement claim.

3.2 Each school district will submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.

3.3 Each school district will submit a roster of cafeteria managers to the Department of Education showing names of employees and the salaries prescribed in 14 Del. C., Section 1322(a). Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the state formula.

## Substitutes

### 1.0 Payment of Teacher and Other School Employee Substitutes

1.1 Substitutes for State funded teachers may be paid from State substitute teacher funds under the provisions of 14 Del. C., Section 1318 – Sick leave and absences for other reasons (only specified reasons allowable), Title 29, Section 5524 – Eligibility for disability pension and Title 29, Section 5933 – Leaves (sick leave not counted for absence for work-related disease or accident).

1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:

1.2.1 Military leave (training or duty not in excess of 15 days).

1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for 1/2 day on abbreviated days when kindergarten is scheduled.

1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.

1.3 Substitutes for teachers absent under the provisions of 14 Del. C., Section 1320, Deduction for Unexcused Absence (or on approved leave without pay) may be charged to the Division I teacher salary line.

1.4 Substitutes for teachers paid from federal funds are to be paid from federal funds from the federal program involved or local funds.

1.5 Substitutes for teachers paid from local funds are to be paid from local funds.

1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds are to be paid on the same proportional basis from State substitute teacher funds.

1.7 Substitutes are to be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 Del. C., Section 1326. School districts paying more for teacher substitutes than prescribed in Section 1326 shall do so from local or federal funds.

## CAREER GUIDANCE AND PLACEMENT COUNSELORS

The Secretary seeks the consent of the State Board of Education to repeal the regulation, Career Guidance and Placement Counselors, pages A-24 and A-25 in the Handbook for K-12 Education. The existing regulation defines very specifically what the person must do in this type of position. The repeal is recommended because the position is no longer funded from a line item in the budget. Now if the district chooses to employ such a person, the funding for

the position comes from their academic excellence units. There are existing certification requirements for Career Guidance and Placement Counselors which will help to define this counselor's role in the school. It is no longer appropriate for the Department of Education to write a job description for the position when the funding source and process has changed.

## 2. CAREER GUIDANCE AND PLACEMENT COUNSELORS

(a) In the document Guidelines for the Career Guidance and Placement Counselor Program the State Board of Education approved the following job description for the Career Guidance and Placement Counselors:

Specific Tasks of the Career Guidance and Placement Counselors:

(1) provide coordination to assure students are counseled about vocational and related academic educational programs that best meet their needs at both the regular high school and/or in the vocational school district;

(2) prepare and keep current a file of available jobs in the community and serve as liaison with the State Occupational Information Coordinating Committee (SOICC) and the Department of Labor;

(3) provide coordination with career and vocational counseling of middle school students;

(4) provide job placement counseling and assist students who desire full time placement upon graduation;

(5) assist with the coordination of student assessment, IEP development, and placement of all handicapped and disadvantaged students in mainstream vocational programs;

(6) assist the school district in providing information to all handicapped and disadvantaged students and their parents concerning the opportunities available in vocational education and the requirements for eligibility for enrollment in vocational education programs. (This should be accomplished no later than the beginning of the 9th grade.)

(7) complete a follow-up study of graduates and dropouts of each year's graduating class;

(8) serve as liaison with the employment community and vocational advisory committees;

(9) assist in on-going pre-vocational/orientation programs to insure relevancy and coordination with the activities of the career guidance and placement counselor's function;

(10) assist students in exploring nontraditional, as well as traditional, vocational program areas and make career information available to all students for both traditional and nontraditional jobs; and

(11) coordinate the dissemination of information and the maintenance of records for the Targeted Jobs Tax Credit program for eligible student co-op participants.

(State Board Approved July 1987)

**EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL.C., SECTION 122(d)**

PLEASE NOTE THAT DEPARTMENT OF EDUCATION REGULATION K-12 GUIDANCE PROGRAMS WAS INITIALLY PROPOSED ON FEBRUARY 1, 2000 (3 DE REG 1053 (2/1/00)). THE REGULATION IS BEING RE-PROPOSED IN ITS ENTIRETY BELOW.

**K-12 GUIDANCE PROGRAMS**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Acting Secretary seeks the consent of the State Board of Education to amend the regulations for K-12 Guidance Programs, page A-23 and Appendix B in the *Handbook for K-12 Education*. The amended version of the regulations still requires local school districts to have a plan for their K-12 School Counseling Program but the plan will now be based on the 9 standards identified in the National Standards for School Counseling Programs developed by the American School Counselors Association. The plan will no longer have to be sent to the Department of Education for approval but must be on file in the district office either as part of the district Strategic Plan or as a separate plan.

The existing Delaware Guidelines for Counseling Programs are very similar to the new national standards even dividing the standards into the same categories, Academic Development, Career Development and Personal/Social Development.

The title of the amended regulation has been changed from K-12 Guidance Programs to K-12 School Counseling Programs.

**C. IMPACT CRITERIA**

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations address the design of guidance programs, not student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The regulations address the design of guidance programs, not equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address the design of

guidance programs, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address the design of guidance programs, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of the decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school level.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulations?

The purpose of the amendment is to make the regulations less burdensome.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no cost to the state or local school boards for complying with the amended regulations.

**AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION**

~~H. GUIDANCE AND COUNSELING~~

~~H. REGULATIONS AND GUIDELINES FOR K-12 GUIDANCE PROGRAMS~~

~~Regulations and Guidelines for K-12 Guidance~~

Programs were approved in March 1990 by the State Board of Education. These are included in Appendix B. (State Board Approved March 1990)

**AS APPEARS IN APPENDIX B OF THE HANDBOOK  
FOR K-12 EDUCATION, PAGES 1 & 2**

**REGULATIONS FOR K-12 GUIDANCE PROGRAMS**

The purpose of these regulations is to provide a framework for a K-12 developmental guidance program. These programs should be planned and coordinated to emphasize the development of positive self-esteem, the development of activities to promote academic/career and personal/social growth, and to encourage economic and social self-sufficiency. This requires the coordination of support services within the school, district, and community.

I. Each school district in Delaware shall have a written plan describing the guidance program for the district which is reviewed periodically and updated at least every five years.

A. The plan shall be submitted to the Department of Public Instruction, Instruction Division, for review prior to the implementation date of September 1, 1991. Any changes or revisions to the district plan shall be submitted to the Department of Public Instruction, Improvement and Assistance Branch, as they occur.

H. The district guidance plan shall be a written description of a sequential program of services and activities to be available to all students in grades K-12.

A. The plan shall address the needs of students in the areas of personal/social development, academic development, and career/life planning.

B. The plan shall systematically include as part of the total program any existing specialized services such as the Career Guidance and Placement Counselor, drug and substance abuse counseling, peer counseling, crisis counseling, and other counseling related programs.

C. The plan shall identify an individual to coordinate the guidance program within the district for all grade levels.

D. The plan shall describe the involvement and responsibilities of counselors, administrators, specialists, and parents in the guidance program.

E. The plan shall describe the working relationships of school counselors to other specialists.

F. The plan shall provide for the involvement of a district level advisory committee which includes parents, district teachers, and/or staff members, counselors from each level of education, administrators, students, representatives of business and industry, and agencies which provide support services for district children.

G. The plan shall include procedures for coordinating

school counseling services with agencies and community groups which provide services for children.

H. The plan shall include a job description for each counselor which reflects the activities and services described in the guidance program.

I. The plan shall include a method of evaluating the program which enables counselors to determine their effectiveness in terms of both process and outcome.

J. The plan shall describe services for all students including special needs students and those identified as being at risk.

**AS AMENDED**

**K-12 School Counseling Program**

1.0 Each local school district shall have a written plan describing the school counseling program for the district and the plan shall:

1.1 Include the nine (9) program standards, three each in the areas of Academic Development, Career Development and Personal/Social Development found in the National Standards for School Counseling Programs as developed by the American School Counselors Association.

1.1.1 Local school districts may select those competencies that meet the needs of their students.

1.2 Be periodically reviewed and updated by the local school district.

1.3 Be included in the district's Quality Review plan or on file as a separate plan in the district office.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 2701 (7 Del.C. §2701)

**Register Notice**

1. Title of the Regulation:  
Shellfish Regulations S-54 Possession Limit on Horseshoe Crabs; Exceptions
2. Brief Synopsis of the Subject, Substance and Issues:  
The Interstate Fishery Management Plan for Horseshoe Crab, (FMP) adopted by the Atlantic States Marine Fisheries Commission, has imposed a 25% reduction in the number of horseshoe crabs that may be harvested in 2000 by each Atlantic Coastal State relative to their average annual reference period landings. For Delaware, the reference

period landings for horseshoe crabs are in the years 1995, 1996 and 1997 when an annual average 482,401 horseshoe crabs were landed. In 2000, Delaware must not land more than 361,801 horseshoe crabs to meet the mandatory requirement of the FMP. Regulations must be in effect by May 1, 2000 to implement this reduction. This reduction in landings will conserve the horseshoe crab population in order to maintain sustainable levels of spawning stock biomass and ensure its continued role in the ecology of coastal ecosystems while providing for continued use over time.

The Department is considering daily harvest limits for horseshoe crab collectors, horseshoe crab dredgers and commercial eel pot fishermen to reduce their harvest to 361,801 horseshoe crabs. The Department also is considering to require written permission to collect horseshoe crabs from private lands. The Department also is considering to ban the bringing of horseshoe crabs into state waters from the Exclusive Economic Zone.

3. Possible Terms of the Agency Action:

If Delaware fails to comply with the FMP, the horseshoe crab fishery in the State may be closed by the Secretary of the Department of Commerce until such time Delaware meets the requirements of the FMP.

4. Statutory Basis or Legal Authority to Act:  
7 Del.C. §2701

5. Other Regulations That May Be Affected by the Proposal:

Shellfish Regulation S-51, Seasons and Areas closed to taking Horseshoe Crabs; S-55, Horseshoe Crab Dredging Restrictions; S-57, Horseshoe Crab Reporting Requirements

6. Notice of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, 302-739-3441 prior to 4:30 PM. A public workshop will be held in the Department of Natural Resources and Environmental Control auditorium on March 7, 2000 at 7:30 PM to discuss various options to reduce the harvest of horseshoe crabs by 25%. A public hearing on proposed amendments to shellfish regulations on horseshoe crabs will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on March 20, 2000. The record will remain open until 4:30 PM on March 30, 2000.

7. Prepared by:

Charles A. Lesser(302)-739-3441February 14, 2000

**Proposed Amendments to Shellfish Regulations on  
Horseshoe Crabs**

**S-51, Seasons and Area Closed to Taking Horseshoe  
Crabs**

(a) It shall be unlawful for any person to collect or dredge or attempt to collect or dredge horseshoe crabs from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing, except that persons with valid horseshoe crab collecting permits and eel licensees and their alternates may collect horseshoe crabs on Tuesdays and Thursdays from state owned lands to the east of state road No. 89 (Port Mahon Road.)

(b) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any lands not owned by the state or federal government during the period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing, except that persons with valid horseshoe crab collecting permits and eel licensees and their alternates may collect horseshoe crabs on Mondays, Wednesdays and Fridays.

(c) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from lands not owned by the State or federal government unless said person has in his or her possession written permission to collect horseshoe crabs signed by the lawful owner of said lands.

**S-54, Possession Limit of Horseshoe Crabs,  
Exceptions**

(a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has filed all required reports of his/her and his/her alternate's previous month's harvest of horseshoe crabs with the Department in accordance with S-57. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

(c) It shall be unlawful for any person with a valid

commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

(d) Any person with both a valid commercial eel fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of chapter 27, 7 Del.C. and/or shellfish regulations pertaining to horseshoe crabs.

(e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

(f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

~~(g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.~~

(g) It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to take or attempt to take more than 300 horseshoe crabs per day.

(h) It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to possess more than 300 horseshoe crabs at any time during the sequence of collecting said horseshoe crabs and placing said horseshoe crabs in a stationary cold storage or freezer facility.

(i) It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to bring into the jurisdictional waters of this State any horseshoe crabs harvested from the Exclusive Economic Zone.

### **S-55, Horseshoe Crab Dredging Restrictions**

(a) It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased Shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then

continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

(b) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than ~~4500~~ 1125 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

(c) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing.

### **S-57, Horseshoe Crab Reporting Requirements**

(a) It shall be unlawful for any person who has been issued a scientific permit, a beach clean up permit, a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit, or a commercial eel pot license if used to collect horseshoe crabs for personal, non-commercial use to not file a monthly report of his/her harvest of horseshoe crabs with the Department on forms provided by the Department on or before the 10th day of the next month. Monthly reports on horseshoe crabs shall be filed for each month whether horseshoe crabs are dredged or collected or not dredged or collected, and include the harvest by any person or persons authorized by S-54 and S-52 to assist with the collection of horseshoe crabs. Said forms shall require the reporting of the date, location, sex and number of horseshoe crabs dredged or collected.

(b) Any person who fails to file a completed monthly report with the Department on horseshoe crabs on or before the 10th day of the following month shall have his/her permit or authority to collect horseshoe crabs as a commercial eel fisherman, a commercial horseshoe crab collector or a horseshoe crab dredger suspended until such time that all delinquent reports are received by the Department.

**DEPARTMENT OF PUBLIC SAFETY**

**DIVISION OF MOTOR VEHICLES**

Statutory Authority: 21 Delaware Code,  
Sections 302, 2733(a)(4) (21 **Del.C.** §§302,  
2733(a)(4))

The Department of Public Safety will hold a hearing Pursuant to 29 Del.C. Chapter 101 concerning the adoption of Policy Regulation 45 entitled "Driver Improvement Problem Driver Program" that replaces current Policy Regulation 45 entitled "Driver Point System." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

The Department will also receive public comment regarding a proposed Department of Public Safety Policy Regulation to establish administrative procedures to implement an aggressive driver program as outlined in 21 Del.C. 4175A, Aggressive Driving. This proposed Policy Regulation would become Policy Regulation Number 90 Concerning Aggressive Drivers.

DATE: Wednesday, March 22, 2000

TIME: 10:00 AM

PLACE: Main Conference room (2<sup>nd</sup> Floor)

Department of Public Safety  
Public Safety Building  
303 Transportation Circle  
Dover, Delaware 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 AM to 4:00 PM, Monday, Tuesday, Thursday and Friday or between the hours of 12:00 PM and 7:00 PM on Wednesday, at the Division of Motor Vehicles, Chief of Driver Services Office, in the Public Safety Building, 303 Transportation Circle, Dover, Delaware 19901.

Persons may present their views in writing by mailing their views to the Chief of Driver Services, Division of Motor Vehicles, PO Box 698, Dover, Delaware 19903 or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

**PLEASE NOTE THAT THE PROPOSED REGULATION NUMBER 45 REPLACES IN ITS ENTIRETY EXISTING REGULATION 45 - DRIVER POINT SYSTEM.**

**Policy Regulation Number 45  
Concerning: Driver Improvement Problem  
Driver Program**

I. Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del. C. §2733(a)(4) and 29 Del.C. §10115.

II. Purpose

The Highway Safety Program Standard for Driver Licensing as adopted by the National Highway Traffic Safety Administration requires each state to have a driver improvement program to identify problem drivers and take actions to reduce the frequency of their involvement in traffic accidents and violations. The Driver Improvement Problem Driver Program is designed to identify problem drivers, to change the problem driver's behavior by providing information and training opportunities and, if necessary, to progressively impose sanctions as more convictions/points are accumulated on the driving record. The goal of the program is crash prevention. The steps in the program are geared to the seriousness of the driving record.

The Division of Motor Vehicles Driver Improvement staff uses these policy guidelines to initiate program requirements and impose license suspensions.

III. Applicability

This policy regulation interprets the following sections found in Title 21: §2722, §2733(b), (e), (j), §2755, §2756, §4166(d), (j), §4169, §4175, 4175a, §4172(a), (b), §4172A, §6702, and §8101.

IV. Substance of Policy

1. Point System. The Division of Motor Vehicles shall identify problem drivers, educate and impose driver license sanctions based upon a point system. Violations will be assessed points based upon the following:

Violations	Points
Speeding 1-9 miles per hour over posted limit	2
Speeding 10-14 miles per hour over posted limit	4
Speeding 15-19 miles per hour over posted limit	5
Speeding 20 or more miles per hour over posted limit	5*

\*May result in additional actions including suspension

Violations	Points
Passing A Stopped School Bus	6
Reckless Driving	6
Aggressive Driving	6
Disregarding Stop Sign or Red Light	3
Moving violation contained in Chapters 27, 41 or 42 of Title 21	2

Point Credits	Calculated Points	Action Items
<p>a. A licensee who is convicted of a speeding violation from 1 to 14 miles per hour over the posted speed limit will not be assessed points for the first violation within any three (3) year period provided the ticket is paid through the voluntary assessment center.</p>	8	<p>Division of Motor Vehicles advisory letter is mailed to the driver. DDC credits will not impact the issuance of an advisory letter.</p>
<p>b. Completion of the Defensive Driving Course (DDC), recognized by the Division of Motor Vehicles and approved by the Insurance Commissioner's Office will be entered on the licensee's driving record. The licensee shall have a 3-point credit entered on their driving record following satisfactory completion of the course. The licensee is responsible for enrollment scheduling and the payment of all fees associated with this course. DDC credit is effective on the date of course completion. DDC credit will not be applied retroactively once an action item is in effect.</p>	12	<p>Driver must complete an approved "behavior modification/attitudinal driving course" within 90 days after notification (unless extended by the Division). Failure to comply or upon preference of the driver, a mandatory 2 month suspension will be imposed in lieu of the program.</p>
<p>c. The point credits listed in paragraph (b) shall not be considered when determining the eligibility of a school bus operator. To determine the point level for a school bus operator or applicant, use full point value, not calculated points, for the previous 3-year period.</p>	14	<p>Mandatory 4 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years.</p>
<p>2. Driver Improvement Problem Driver Program. A driver enters the Driver Improvement Problem Driver Program when they accumulate 8 calculated points based upon on their driving record for the previous two years. At that time an advisory letter is sent to the driver. Studies show that early intervention with inexpensive actions reduce accidents and improve driving behavior.</p>	16	<p>Mandatory 6 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years.</p>
<p>Convictions received from other jurisdictions are posted to the Delaware driving record. The points will be assessed on these violations as though the offense was committed in this State in accordance with the Driver License Compact.</p>	18	<p>Mandatory 8 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years.</p>
<p>"The Aggressive Driving Committee, in accordance with Policy Regulation 90, must certify all behavior modification/attitudinal driving courses. The committee has the authority to designate alternative courses to comply with the requirements of Policy Regulation 45."</p>	20	<p>Mandatory 10 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years.</p>
<p>The actions listed below occur as calculated points are accumulated during any 24-month period. The 24-month period is computed based upon the date of the offense and "slides" forward based upon that date. The driving record will record the actions taken. The Driver Improvement Section will conduct a record review at each step in the process and schedule interviews as necessary. The action items maybe processed automatically without an interview. When the calculated points fall between the threshold limits, use the action items specified in the lower level. (Example: If the driver accumulates 9 points before any action is taken, send out an advisory letter as required when they accumulate 8 points.) If the driver accumulates 12 points before the advisory letter is sent, use the action item listed for drivers with 12 points.</p>	22	<p>Mandatory 12 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years.</p>
		<p>3. Serious Speeding Violations. The Division of Motor Vehicles considers all speeding violations 20 miles per hour (MPH) or more above the posted speed limit to be a serious speeding violation that identifies the driver as a problem driver. The following actions will be taken:</p> <p>(a) When a driver is convicted of a single speeding violation for driving 20 – 24 MPH over the posted limit and accumulated less than 12 calculated points, the Driver Improvement staff will review their driving record and send the driver an advisory letter.</p> <p>(b) When convicted of driving 25 MPH over the posted limit, the driver's license will be suspended for a mandatory period of 1 month. The suspension period will be increased by one month for each additional 5 MPH over the initial 25-MPH threshold. Note: The driver may elect to</p>

attend the “behavior modification/attitudinal driving course” in lieu of a license suspension if they were driving 25 – 29 MPH over the posted limit.

(c) Anyone convicted of driving 50 MPH or more over the posted speed or driving 100 MPH or more shall be suspended for a period of one year. The driver is not eligible for an occupational license during the first three months of the suspension period.

4. Additional Sanctions Imposed by Statute or Policy.

(a) Passing a stopped school bus in violation of 21 Del.C. Section 4166(d). For the first offense, one-month driver license suspension. For the second offense, six months suspension. For the third or more offenses, suspend the driver’s license for twelve months.

(b) Driving in violation of a license restriction per 21 Del.C. Section 2722. For the first offense, send an advisory letter. Suspend the driver’s license for one-month for subsequent offenses.

(c) Speed exhibition violation per 21 Del.C. Section 4172(a)(d). One-month suspension for the first offense and one-year driver license suspension for subsequent offenses.

(d) Spinning wheels violation per 21 Del.C. Section 4172(b). Send an advisory letter for the first offense. Suspend the driver’s license for one year for second and subsequent offenses.

(e) Malicious mischief violations per 21 Del.C. Section 4172A. One-month driver license suspension for the first offense. One-year suspension for the second and subsequent offenses.

(f) Knowingly permit an unlicensed person to operate a vehicle violation per 21 Del.C. Section 2755. Send an advisory letter for the first offense. Three-month driver license suspension for the second and subsequent offenses.

(g) Driving without consent of the owner violation per 21 Del.C. Section 6702. One-month driver license suspension for the first offense and three month’s suspension for the second and subsequent offenses.

(h) Driving during suspension or revocation violations per 21 Del.C. Section 2756. A conviction for driving during suspension or revocation shall extend the period of the suspension or revocation for a like period. No driving authority will be permitted during the balance of the initial suspension or revocation period and the extended period. Any driving authority previously issued by the Division must be surrendered.

Note: For violations to be considered a subsequent offense, the violations must be under the same subsection and cannot be a combination of violations such as Sections 4172(a) and Section 4172(b). To be considered a second or subsequent offense, the convictions must be within the previous three years.

5. Occupational License. In the event of a suspension

of a driver’s license pursuant to this policy regulation, the Division may issue an occupational license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship. However, no such occupational license shall be issued if the applicant has two previous suspensions under this policy regulation within the previous 3 years, or if the suspension is for physical and/or mental disability, or if the license is revoked for convictions of any crimes specified in Section 2732 of Title 21 even though it causes an extreme hardship. Any driver convicted of operating a motor vehicle in violation of the restrictions imposed by the occupational license shall immediately extend the suspension period for an additional like period and shall direct the driver to surrender their occupational license. No more than one occupational license under this policy shall be issued within any 12-month period.

Drivers suspended under this program are ineligible for an occupational license for one month. If the calculated point level reaches 15 or more points in a 24-month period, an occupational license will not be issued until the calculated points are less than 15 points.

6. Calculated Points. For the purposes of this Policy Regulation, calculated points are credited at full point value for the first twelve months from the date of the violation. After the initial 12 months have expired, the calculated points will be credited at (½) point value for the next 12 months. The Division will only take action based upon convictions accumulated within the 24-month period following the date of the offense.

7. Moving Violations. Those violations contained in 21 Del.C. Chapters 27, Chapter 41 and Chapter 42, excluding those violations that require mandatory suspension or revocation actions. Multiple violations occurring within a 24-hour period shall be considered individual violations for the purposes of this policy regulation.

8. Advisory Letter. The Division will send an advisory letter to those drivers who accumulate 8 calculated points or when convicted of speeding 20 – 24 MPH over the posted limit. The purpose of the advisory letter is to express our concern about the operator’s driving habits and their impact upon highway safety. The letter will inform the driver about the Driver Improvement Problem Driver Program. An advisory letter may be sent for both point accumulations and excessive speed violations.

9. Record Review. The goal of the record review is to assess any problems the driver may have and require a course of action. The record review may result in a driver improvement interview/counseling session, medical or vision examination, knowledge and/or skills testing, restricted license, license suspension or the surrender of a license.

10. Interviews. The Driver Improvement staff may schedule the driver to attend an interview based upon the

record review. The licensee may request an interview with a Driver Improvement Officer or staff member when notified of pending action against them. The following issues are open to discussion:

- The driver may request an additional 90 days to complete a mandatory attendance at the “behavior modification/attitudinal driving course” or they may request a license suspension in lieu of attending the program. Any further delays in completing the program must be approved by the Driver Improvement Manager or the Chief of Driver Services.
- The driver can present evidence that the convictions on their driving record belong to another driver. If proven, the convictions will be removed.
- If the violation on record is under appeal by the court, the driver must submit a copy of the appeal bond and the violation will be removed from the driving record. If applicable, the suspension action resulting from this violation be removed from the driving record.
- The Driver Improvement staff may require the driver to complete a medical or vision examination, pass a knowledge or skill test or restrict their driving privileges based upon the results of the interview.
- This policy regulation shall have no effect on the revocation actions, medical qualifications or requirements, or suspension action required by statute unrelated to this policy.

#### V. Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

#### VI. Effective Date

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del. C. §10118(e).

### Policy Regulation Number 90 Concerning: Aggressive Drivers

#### I. Authority

This Regulation is adopted pursuant to 21 Del. C. Section 4175A and promulgated in accordance with 21 Del. C. Section 302 and with the procedures specified in the Administrative Procedures Act, 29 Del. C. Section 10115.

#### II. Purpose

This policy regulation establishes administrative procedures used to administer the aggressive driver program as outlined in 21 Del.C. Section 4175A. Aggressive driving is defined in terms of existing Title 21 offenses such as failure to yield, unsafe lane change, disregarding a traffic control device, failure to stop, following too closely, passing on a shoulder and speeding. Individuals convicted of three or more of these offenses as a result of continuous conduct are guilty of aggressive driving and are subject to increased penalties. Offenders are required to complete a course of instruction established by the Secretary of Public Safety to address behavior modification or attitudinal driving problems. The Secretary administers the course and programs, adopts rules and regulations therefor and establishes a fee schedule for enrollment in the programs that will not exceed the maximum fine that may be imposed under the statute.

#### III. Duties and Responsibilities

##### A. Duties and Responsibilities of the Division of Motor Vehicles.

1. When convicted of aggressive driving, the court will send the Division of Motor Vehicles’ Driver Improvement Section a copy of the court order directing the driver to complete a course of instruction to address behavior modification or attitudinal driving problems and recommending suspension of the driver’s license or driving privileges for failure to attend the course.

2. The driver is responsible for contacting the Division of Motor Vehicles Driver Improvement Section. That Division will provide them information concerning the course(s) established or approved by this State.

3. If the driver is licensed in another state, the driver may either attend an established course taught in Delaware or attend a similar course taught in their home state. The driver must submit documentation from the licensing agency or from the school providing the training outlining the length of the training, course syllabus, and any other information needed to evaluate the alternative course. The Aggressive Driving Committee will evaluate and approve or disapprove out-of-state courses. If the out-of-state licensed driver fails to contact the Division or to complete the course within 90 days, the Division will notify the convicting court. The court will hold a non-compliance hearing and will, at its discretion, either issue a failure to comply order or will allow the driver/defendant to re-enter the program. A copy of all non-compliance orders issued will be forwarded to DMV for them to suspend the licensee’s driving privileges pursuant to 21 Del. C. Section 2733(c). The Division will forward the failure to comply order to the state-licensing agency in which the driver is licensed. If the licensee, through no fault of his own, is unable to complete the course within the 90-day period, the Driver Improvement

Section may extend the required completion date by an additional 90 days upon written request.

4. If a Delaware licensed driver has not contacted the Division or has not completed the required course within 90 days after the conviction, the Driver Improvement Section will notify the convicting court. The court will hold a non-compliance hearing and will, at its discretion, either issue a failure to comply order or will allow the driver/defendant to re-enter the program. A copy of all non-compliance orders issued will be forwarded to DMV for them to suspend the license. The Division will suspend their driver's license upon direction of the court pursuant to 21 Del. C. Section 2731(a). The license may be reinstated once the course is completed and the appropriate fees paid. An occupational license will not be issued during the period of the suspension. If the licensee, through no fault of his own, is unable to complete the course within the 90-day period, the Driver Improvement Section may extend the required completion date by an additional 90 days upon written request.

5. The Driver Improvement Section will notify the court when the aggressive driver completes the required training course.

B. Duties and Responsibilities of the Office of Highway Safety.

The Office of Highway Safety is responsible for organizing and managing the Aggressive Driver Committee.

#### IV. Aggressive Driving Committee

A. The Aggressive Driver Committee ("Committee") membership is as listed in this subsection. The Committee members shall not be employed by or have any financial interest in the companies selected as providers.

1. Chairman, Director of the Office of Highway Safety,
2. Chief of Driver Services,
3. Driver Improvement Manager or Assistant Manager,
4. Representative from the Office of Highway Safety,
5. Division of Motor Vehicle Training Officer.

B. Duties. The Committee shall:

1. Be chaired by the Director of the Office of Highway Safety who shall make recommendations to the Secretary concerning the duties set forth herein:

2. Review and examine aggressive driving course providers, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider, instructor, prospective provider and instructors.

3. Review and examine behavior modification/attitudinal driving courses and shall further monitor courses to ensure each course continues to meet the Committee's

minimum requirements, as outlined in the Regulation. The Committee may recommend amendments to course requirements contained in this Regulation that may be adopted by either amending this Regulation or by a letter signed by the Secretary.

4. Establish a schedule of fees for enrollment in the course, which shall not exceed the maximum fine imposed per 21 Del. C. Section 4175A(c) for those convicted of a first offense and subsequent offenses for aggressive driving.

5. Annually certify approved course providers and individual instructors when the course provider/instructor continues to meet the requirements of this Regulation; and

6. Conduct any other activity reasonably related to the furtherance of its duties.

#### V. Provider Certification Requirements

A. Each course provider shall submit for approval a written course description for any behavior modification/attitudinal driving course to be offered that minimally includes the following elements:

1. Provide the course curriculum and any handouts, texts and other material used in the course.

2. Inform the Committee as to how their curriculum is designed to induce positive changes in attitude and driving behavior in persons identified as problem drivers. The provider will discuss those psychological principles used in the course to change behavior (such as B. F. Skinner's "Behavior Modification" studies, William Glasser's "Reality Theory", programs developed for juvenile or first time offenders generally known as "Scared Straight" programs).

3. If available, the provider may submit studies that substantiate that their course curriculum has improved the student's driving behavior as a result of completing their course as taught in Delaware or in any other jurisdiction.

4. Provide a profile of the company's organizational capabilities and a detailed description of its experience relevant to providing the proposed course of instruction. The provider must have at least five years experience conducting in-class driver training programs such as initial and advanced driver training course, license upgrade training, rehabilitation training, defensive driving course or behavior modification courses.

5. Assume all costs of the behavior modification/attitudinal driving course of instruction including classroom facilities in each county, training costs and payment of employee wages. The State of Delaware will not reimburse the provider for any costs.

6. Specify where the classes will be taught in each county. If available, the provider may request the use of classroom space, at no cost, in the Division of Motor Vehicles facilities. The classroom space must be accessible

to drivers with physical disabilities and in compliance with the Americans With Disabilities Act of 1990. The Committee reserves the right to reject the use of any facility it deems unfit for classroom instruction.

7. The provider must be able to conduct at least one class per month at a location deemed convenient for a majority of the participants. At least one class will be taught each quarter. The class size should not exceed thirty students.

8. Assess a reasonable and uniform fee for the course as established by the Committee in accordance with 21 Del. C. Section 4175A(d). The provider must arrange a payment schedule for offenders who are unable to pay the course in a single payment. The provider is responsible for any costs associated with the collection of checks drawn on insufficient funds or on unpaid registration fees. The provider may withhold the certification of course completion until all fees are paid in full.

9. Maintain records relevant to the behavior modification/attitudinal driving course and its participants. As a minimum, the provider must retain for at least three years the class locations, times, number of participants and the names, driver license numbers and date of birth of those completing and those failing to complete the course. Department of Public Safety officials will have access to these records for the purposes of monitoring trends and evaluating the effectiveness of the course. The providers must have the capacity to access and update the Department of Public Safety's Aggressive Driver Tracking System.

10. Require each student to receive a minimum of eight hours of classroom training. Each hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of the course curriculum. The instructors will maintain an atmosphere appropriate for class-work and present the course in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein. The instructors will be in the classroom with the students during any and all periods of instructional time.

11. Supply students who complete the behavior modification/attitudinal driving course with a certification of completion that includes, at a minimum:

- a. The student's name, date of birth, driver license number and address, and
- b. The date of the class, the name of the provider, title of the course completed and the course sponsor's authorized signature.

12. Require that each student fill out a standardized Course/Instructor Evaluation Form, as designated by the Committee, upon completing the course. The provider will retain one copy of this form for three years and one copy will be sent to the Committee.

13. Provide in-service training or other training session for all instructors, regarding behavior modification/attitudinal driving courses.

14. Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division. Upon request, the provider will inform the Division when a student has not successfully completed a required course.

#### VI. Basic Instructor Requirements

##### A. Each instructor shall:

1. Be at least 18 years of age;
2. Be a high school graduate or have a G.E.D.;
3. Hold a valid driver's license with no more than 6 points, no suspensions or revocations in the past two years; and
4. Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

#### VII. Course and Instructor Re-certification Procedures

##### A. Annually the provider shall:

1. Submit evidence that their instructors have taught the certified course a minimum of 8 hours in the previous calendar year;
2. Submit evidence that the instructor attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified behavior modification/attitudinal driving course provider; and
3. Certify that the instructors continue to meet the instructor requirements as outlined in this Regulation.
4. When the Committee initially certifies a provider and their instructors, they will be given a one-year contract. The provider must apply for re-certification by December 31 every year. The Committee will send out application renewal requests in October. The providers must complete the renewal applications and return them to the Committee between November 15 and December 31. The Committee will re-certify or deny re-certification by January 31.

#### VIII. De-Certification, Suspension and Probationary Status

A. Course providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. The Committee shall direct investigations relating to the issues of compliance.

B. Prior to de-certification, placement on probation or suspension of certification, the Committee shall notify the course provider/instructor, in writing. The course provider/instructor shall be given a reasonable opportunity to submit evidence of compliance in their defense.

C. A course provider/instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

D. Course providers/instructors may be de-certified, suspended or placed on probation for the following:

1. Submitting false information in or with the Application for Certification/re-certification;
2. Falsification of, or failure to keep and provide adequate student records and information as required herein;
3. Evidence that the course is not effective in changing the driving behavior of those problem drivers who complete the course;
4. Falsification of, or failure to keep and provide adequate financial records and documents as required; and
5. Failure of any provider or instructor to comply with the standards set forth in this Regulation.

#### IX. APPEAL PROCEDURES

A. Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course provider/instructor may file an appeal requesting a review of the action taken.

B. The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

C. The Committee shall conduct all hearings pursuant to Title 29, Chapter 101 of the Delaware Code.

Brian J. Bushweller, Secretary  
Department of Public Safety

Michael D. Shahan, Director  
Division of Motor Vehicles

### **PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 Del.C. 209(a))

**PLEASE NOTE THAT PSC REGULATION DOCKET NO. 4 WAS INITIALLY PROPOSED ON JULY 1, 1998 (2 DE REG. 81 (7/1/98)). THE REGULATION WAS SUBSEQUENTLY RE-PROPOSED ON APRIL 1, 1999 (2 DE REG. 1741 4/1/99). THE FOLLOWING IS THE SECOND RE-PROPOSAL OF REGULATION DOCKET NO. 4.**

In the Matter of the Regulation		
Establishing the Minimum Filing		
Requirements for All Regulated		
Companies Subject to the		PSC Regulation
Jurisdiction of the Public Service		Docket No. 4
Commission (Reopened May 26, 1999)		

#### **Order No. 5349**

AND NOW, this 8th day of February, 2000, the Commission having considered the briefs, statements of position, evidence, and testimony submitted to the Hearing Examiner; the Report of the Hearing Examiner dated November 30, 1999; the exceptions thereto filed by Chesapeake Utilities Corporation ("Chesapeake") and Delmarva Power & Light Company ("Delmarva") on December 22, 1999; and the oral argument presented by Chesapeake, Delmarva, Staff, and the Division of the Public Advocate on January 11, 2000;

#### IT IS ORDERED THAT:

1. As and for its summary of the evidence pursuant to 29 Del. C. § 10128(b)(1), the Commission incorporates by reference the "Appearances," "Background," and "Summary of the Record and Discussion" sections (sections I through III) of the Report of the Hearing Examiner herein dated November 30, 1999.

2. Pursuant to 29 Del. C. § 10128(b), the Commission adopts the following findings of fact and conclusions of law.

3. Part "A", Section I(C). Staff proposed changes to this section of the Minimum Filing Requirements ("MFRs") for the principal purpose of curtailing the alleged practice, by some utilities, of modifying test period data late in the rate review process. With one nonsubstantive exception, the Hearing Examiner recommended the adoption of Staff's proposal in its entirety.

4. The Commission adopts the Hearing Examiner's recommendation, but directs Staff to propose additional language that will vest in the Hearing Examiner the discretion to permit utilities to offer modifications in

evidence simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

5. Parts "A" and "B", Section I(E). This section addresses Staff's review of rate increase applications for compliance with the MFRs, and the consequences of noncompliance. Staff proposed that it be changed to permit Staff to reject defective applications where the defects are "so numerous or serious as to materially impair Staff's timely review of the application . . ." Delmarva, Chesapeake, and others opposed Staff's proposal on due process and other grounds.

6. The Hearing Examiner rejected Staff's proposal, concluding that because "Staff is akin to a party prosecutor in all rate proceedings[,]" it would be unfair to permit Staff to reject rate applications on its own discretion. Report of the Hearing Examiner at ¶36. The Hearing Examiner agreed with Staff, however, that an amendment to this section is needed to allow Staff "sufficient time to fully review and investigate all of the complexities that are so typical of rate cases." *Id.* at ¶38. Accordingly, the Hearing Examiner recommended changes to this section that were (in large part) similar to those proposed by Staff, but which did not confer discretion on Staff to reject defective applications under any circumstances.

7. The Hearing Examiner's recommendation also added a new feature to the debate: It effectively provided that no rate application would be deemed finally filed with the Commission (for the purposes contemplated under the Public Utilities Act) until the completion by Staff of a review-and-notification process. Under the terms proposed by the Hearing Examiner, that process could take as long as fifteen days for nondefective applications, and as long as thirty days for defective applications.

8. Chesapeake and Delmarva took exception to the Hearing Examiner's recommendation, arguing (for example) that a nondefective application should be deemed filed *ab initio*. Chesapeake and Delmarva similarly alleged unfairness in the prospect that an application with only minor defects might be deemed filed a full thirty days after its actual filing date.

9. The Commission concludes that the Hearing Examiner's recommendation should be modified in two respects. First, nondefective applications should be deemed filed as of the date of their actual, initial filing. Second, where an application suffers from only minor defects, the presence of such defects should not affect the date on which it is deemed filed. Staff is directed to propose new language that will effect these modifications.

10. Effect of new proposals. The Commission finds that the new language Staff is herewith directed to draft will reflect substantive changes from its earlier proposals, and so constitute new proposals within the meaning of 29 *Del. C.* § 10118(c). Staff represents that these new proposals are as set

forth in the notice attached hereto as Exhibit "A."

11. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice attached hereto as Exhibit "A."

12. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before March 1, 2000.

13. The Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all public utilities who currently file rate applications under Parts "A" and "B" of the Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Commission, and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

14. John S. Spadaro, Esquire, is designated Staff Counsel for this matter.

15. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 21 *Del. C.* § 114.

16. Report of the Hearing Examiner generally. The Commission adopts the recommendations set forth in the Report of the Hearing Examiner dated November 30, 1999, except as modified above. A copy of the Report of the Hearing Examiner is attached as Exhibit "B."

17. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman  
Joshua M. Twilley, Vice Chairman  
Arnetta McRae, Commissioner  
Donald J. Puglisi, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**Exhibit "A"**

In the Matter of the Regulation		
Establishing the Minimum Filing		
Requirements for All Regulated		PSC Regulation
Companies Subject to the		Docket No. 4
Jurisdiction of the Public Service		
Commission (Reopened May 26, 1999)		

**Notice of Comment Period on Proposed Changes and Amendments to Minimum Filing Requirements**

In 1981, the Delaware Public Service Commission (the "Commission" or "PSC") adopted its Minimum Filing Requirements for general rate increase applications. These

requirements, which were last modified in 1984, govern the filing and content of rate increase applications made by utilities under the Commission's jurisdiction.

Rate increase applications submitted to the Commission are reviewed and evaluated by the Commission's Technical Staff for the justness and reasonableness of the rates proposed. Acting on proposals made by Staff, the Commission recently approved certain changes to the Minimum Filing Requirements. These changes are intended to increase the efficiency of the rate review process.

In the course of considering Staff's proposals, the Commission determined that certain proposals should be modified and published for further public comment and review. The text of the affected provisions is reproduced in its present form below, along with the proposed modifications for each:

1. Part "A," Section I(C) of the Minimum Filing Requirements governs the filing of direct testimony and supporting exhibits, as well as the modification of test period data.<sup>1</sup> It now reads: "Prepared direct testimony and supporting exhibits must be filed coincident with the filing of the applications for rate relief. This filing requirement shall not prohibit the utility from subsequently submitting further testimony and exhibits in a timely fashion as necessary or proper to address issues raised during investigation of the application; nor shall it (or B.2., above) prohibit the utility from also proffering an exhibit or exhibits in the form of a fully projected test period (in addition to the test period described in I.B.2 above), provided: (1) such period shall consist of twelve consecutive months ending not later than the end of the first year during which the proposed rates are to become effective; (2) it is supported by relevant testimony establishing a verifiable link between the test period defined in Section B.2. and the projected test period; and (3) it is in format consistent with such test period. Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility up until the time the utility files its rebuttal testimony." It is proposed that the last sentence of this section be deleted in favor of the following:

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or

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1. Part "A" of the Minimum Filing Requirements governs the filing of rate increase applications by major utilities. Part "B" governs filings by small utilities.

revenues may be offered in evidence by the utility at any time prior to its filing of rebuttal evidence; provided, however, that if any party makes timely objection to the proffered modifications, such objections shall be promptly presented to the Hearing Examiner for a decision on due consideration of the parties' respective positions. For purposes of this Section I(C), an objection shall be timely if made within five (5) business days of the utility's proffer of modifications.

Notwithstanding anything to the contrary in this Section I(C), the Commission, Presiding Officer, or Hearing Examiner may permit the utility to offer in evidence the modifications contemplated hereunder simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

2. Part "A," Section I(E) of the Minimum Filing Requirements addresses Staff's review of rate increase applications for compliance with the Minimum Filing Requirements, and the penalties for noncompliance. This section now reads: "The Commission Staff will review all filings for compliance with the format and instructions furnished herein and notify the utility within 30 days after the date of filing of any defects in compliance. The utility, after such notification by the Commission Staff, will then have 30 days to correct these defects. If such defects are not corrected, the Commission may reject a utility's rate application for non-compliance with the Minimum Filing Requirements." It is proposed that this section be modified to read as follows:

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and, within fifteen (15) days after the date of filing, specifically identify any noncompliance with such format and instructions, and immediately request the Commission's Secretary to promptly notify the utility of the alleged defects in compliance. Following such notification by the Commission's Secretary, the utility shall have fifteen (15) days within which to correct the alleged defects; and only upon the utility's filing of the corrected application shall such application be deemed filed with the Commission for the purposes contemplated under the Public Utilities Act. In the event the alleged defects are not corrected within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these Minimum Filing Requirements.

Nothing in this Section I(E) shall prevent a utility from filing an application in draft form for

Staff's informal review and approval without prejudice, such informal review and approval not to be unreasonably withheld by Staff; nor shall this Section I(E) affect or delay the filing date, for the purposes contemplated under the Public Utilities Act, of rate applications that comply with the format and instructions furnished herein, or whose noncompliance with such format and instructions is deemed minor by the Commission or its Staff.

3. Part "B," Section I(E) of the Minimum Filing Requirements is identical in terms to the corresponding section within Part "A." Accordingly, it is proposed that identical changes be made to this section as are proposed for the corresponding section within Part "A."

The Commission has authority to issue such rules, and to effect the proposed changes and additions, under 26 Del. C. §209(a).

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. All such materials shall be filed on or before March 31, 2000.

In addition, the Commission will conduct a public hearing concerning the proposed changes on Tuesday, April 11, 2000, beginning at 1:00 PM. The public hearing will be held at the Commission's Dover office, located at the address set forth above. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The Minimum Filing Requirements, the proposed changes to the same, and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's Secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at knickerson@state.de.us.

## Exhibit "B"

In the Matter of the Regulation	
Establishing the Minimum Filing	
Requirements for All Regulated	PSC Regulation
Companies Subject to the	Docket No. 4
Jurisdiction of the Public Service	
Commission	

## Report of the Hearing Examiner

Dated: November 30, 1999

G. Arthur Padmore, Hearing Examiner

G. Arthur Padmore, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Orders No. 4805 and 5051, respectively dated May 26, 1998 and March 23, 1999, reports to the Commission as follows:

### I. APPEARANCES

On behalf of Artesian Water Company ("Artesian"): MORRIS, NICHOLS, ARSHT & TUNNELL  
BY: MICHAEL HOUGHTON, ESQUIRE

On behalf of Chesapeake Utilities Corporation ("Chesapeake"): SCHMITTINGER & RODRIGUEZ  
BY: WILLIAM A. DENMAN, ESQUIRE

On behalf of the Division of the Public Advocate ("DPA"): PATRICIA A. STOWELL, The Public Advocate

On behalf of Delmarva Power & Light Company ("Delmarva"): RANDALL V. GRIFFIN, ESQUIRE, Delmarva Power & Light Company

On behalf of United Water Delaware ("UWD"): THE BAYARD FIRM  
BY: WILLIAM D. BAILEY, JR., ESQUIRE

On behalf the Public Service Commission Staff ("Staff"): MURPHY, SPADARO & LANDON  
BY: JOHN S. SPADARO, ESQUIRE

### II. BACKGROUND

1. In 1981, the Public Service Commission of Delaware (the "Commission" or "PSC") adopted "Minimum Filing Requirements For General Rate Increase Applications" ("MFR" or "requirements"). These requirements, which were last modified in 1984, govern the

filing and content of rate increase applications made by utilities subject to the Commission's jurisdiction. Rate increase applications submitted to the Commission are reviewed and evaluated by the Commission's Staff for the justness and reasonableness of the rates proposed.

2. By memorandum dated May 22, 1998, the Commission's Staff proposed that the Commission implement certain changes and additions to the MFR that would purportedly increase the procedural and practical efficiency of the Staff's oversight of the ratemaking process, as well as lessen the administrative burdens related thereto.

3. In response to the Staff proposal, the Commission issued Order No. 4805, dated May 26, 1998, and reopened this rulemaking docket to re-examine the MFR. The Commission's Order also designated this Hearing Examiner to conduct proceedings concerning this matter, invited comments from interested persons, and directed the Commission's Secretary to publish notice of a public hearing<sup>1</sup> to be conducted on August 5, 1998 that would consider comments concerning the Staff-proposed changes to the MFR. The Hearing Examiner was further authorized, at his discretion, to solicit additional public comment, to conduct further public hearings as might be required and, thereafter, to file a report with recommendations to the Commission concerning the Staff proposals.

4. At the conclusion of the August 5, 1998 hearing, the participants agreed to meet on September 9, 1999 in order to consult informally to discuss possible proposals concerning changes to the MFR. (Tr. at 56.) I directed Staff Counsel, Mr. Spadaro, to report to me the results of this meeting no later than September 16, 1998 and noted that following my review of Mr. Spadaro's report, I would schedule a brief public hearing to consider whatever proposals resulted from the consultation. (*Id.*)

5. Although the participants met on several occasions, they failed to reach consensus on any proposal related to modifying the MFR. Subsequently, by letter dated December 2, 1998, Staff withdrew its proposed changes to the MFR. On the same date, I recommended that, under the circumstances, the Commission suspend this docket pending further action by Staff.<sup>2</sup>

6. Staff subsequently filed new proposed modifications to the MFR and, on March 23, 1999, the Commission issued Order No. 5051, which reopened this rulemaking proceeding. The Commission's Order directed

this Hearing Examiner to receive and examine comments from all interested persons, to conduct proceedings, and to make recommendations concerning the new Staff proposals. Pursuant thereto, I convened a pre-hearing conference of the participants on May 13, 1999. A procedural schedule was developed that afforded the participants an opportunity to conduct discovery upon each other and, thereafter, to file their respective statements of position.

7. By letter dated May 27, 1999, Artesian Water Company formally withdrew from further participation in this docket.<sup>3</sup>

8. In accordance with the procedural schedule and upon due notice,<sup>4</sup> I conducted a public hearing concerning this matter in Dover on the morning of September 22, 1999. Staff presented the testimony of Commission Public Utilities Analyst William C. Schaffer in support of its proposed modifications to the MFR. All participants present were afforded an opportunity to cross-examine Mr. Schaffer on Staff's proposals. Previously filed Comments and Statements of Position of the participants were entered into the record at the hearing. No member of the public attended the hearing or otherwise participated in this docket.

9. At the conclusion of the September 22, 1999 hearing, the record consisted of sixteen exhibits and a 207-page *verbatim* transcript of the proceedings. With my permission, the Staff and participants Chesapeake, Delmarva, and UWD filed briefs for my consideration. The initial comments of the participants that were received into evidence at the August 5, 1998 hearing are identified as Exhibits 2 through 8. Since this Report discusses only Staff's "new" proposals (*i.e.*, proposals that were incorporated in the public notice attached to Order No. 5051), I have not considered the material contained in Exhibits 2 through 8. My recommendations herein are based upon my consideration of materials filed since the issuance of Order No. 5051, *i.e.*, the transcript of the September 22, 1999 hearing, Exhibits 10 through 16, and the post-hearing briefs.<sup>5</sup> Based thereon, I submit for the Commission's consideration this Report with recommendations.

### III. SUMMARY OF THE RECORD & DISCUSSION

10. Introduction This matter comes to the Commission based upon certain concerns raised by the Commission's Staff, which normally reviews rate increase applications submitted by public utilities subject to the Commission's

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1. Ex. 1. The exhibits of record will be referred to as "(Ex. \_\_ at \_\_\_)" or "(Ex. \_\_\_)". The transcripts of proceedings in this docket will be referred to as "(Tr. at \_\_\_)".

2. See December 2, 1998 Letter to the Participants from the Hearing Examiner.

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3. May 27, 1999 Letter from David B. Spacht, Vice President and CFO of Artesian Water Company.

4. Ex. 9.

5. The briefs will be cited as "([Participant] at \_\_\_)."

jurisdiction. Staff informed the Commission that the frequency and number of such applications has recently increased significantly, resulting in a corresponding increase in the administrative burdens associated with Staff's review.

11. Staff contends that, with respect to rate applications, the regulated utilities have engaged in certain practices that tend to add significantly and unreasonably to these administrative burdens. According to Staff, these practices typically involve changes made by the utility to data on which the application relies, including changes to the test year, and changes in rate base items, expenses, or revenues. Staff contends that the burden occasioned by such practices is most severe where multiple and material changes are made at different points in time during the pendency of a single application.

12. Staff further contends that, where such changes are sought, they are often of a type that are avoidable through the applicant's exercise of ordinary diligence in preparing its rate increase application. Staff, therefore, has proposed several modifications to the MFR which, according to Staff, will increase efficiency in the rate review process as well as reduce administrative burdens. Primarily, the proposed changes affect: Part "A",<sup>1</sup> Section I(B)(1); Part "A", Section I(C); Part "A", Section I(E); Part "A", Schedule No. 2-B; Part "B", Section I(B); and Part "B", Section I(E). In addition, Staff proposes other miscellaneous changes to the "General Information" section of the MFR. These proposals are discussed in greater detail below.

13. Section I(B)(1)Section I(B)(1) . The first of Staff's proposed modifications relates to Part A, Section I(B)(1) of the MFR, which defines the "test year" and specifies the time period to be reflected by the "test year." Specifically, the last two sentences of this section now state:

In addition, the twelve-month period must end no more than seven months prior to the filing of the application for increased rates. For example, if the actual results of the operations for the twelve months ending March 31, xxxx, are used for the purpose of the test year, the application must be filed no later than October 31, xxxx.

Staff proposes that these sentences be changed to read:

In addition, the twelve-month period must end no more than seven months prior to the filing of the application, but no sooner than one month after the final closing of the company's books for the last

1. Part "A" of the Minimum Filing Requirements governs the filing of rate increase applications by major utilities. Part "B" governs filings by smaller utilities.

month of the test year (post reversal of accrual entries), so that actual expenditures are reflected in the books of account. For example, if the actual results of operations for the twelve months ending March 31, xxxx, are used for purposes of the test year, the application must be filed no sooner than April 30, xxxx, but no later than October 31, xxxx.

Staff contends that with this change, a utility's test year will reflect actual booked results. (Ex. 10 at 2.) According to Staff, such a result will "lessen the burdens associated with post-filing changes to test year data." (*Id.*)

14. Discussion. No participant appears to have objected to the above changes proposed to Section I(B)(1). I have considered the Staff proposal, and it appears to be reasonable. Accordingly, I recommend that it be adopted.

15. Section I(C). This section of the MFR relates to the filing of direct testimony and supporting exhibits, as well as to procedures for modifying test period data. Currently, Section I(C) reads as follows:

Prepared direct testimony and supporting exhibits must be filed coincident with the filing of the applications for rate relief. This filing requirement shall not prohibit the utility from subsequently submitting further testimony and exhibits in a timely fashion as necessary or proper to address issues raised during investigation of the filing; nor shall it (or B.2., above) prohibit the utility from proffering an exhibit or exhibits in the form of a fully projected test period, provided (1) such period shall consist of twelve consecutive months ending not later than the end of the first year during which the proposed rates are to become effective; (2) it is supported by relevant testimony establishing a verifiable link between the test period defined in Section B.2. and the projected test period; and (3) it is in format consistent with such test period.

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility up until the time the utility files its rebuttal testimony.

16. Staff has proposed that the first paragraph of Section I(C) be modified to read:<sup>2</sup>

Prepared direct testimony and supporting exhibits must be filed coincident with the filing of the applications

2. The proposed modifications are *italicized*.

for rate relief. This filing requirement shall not prohibit the utility from subsequently submitting further testimony and exhibits in a timely fashion as necessary or proper to address issues raised during investigation of the application; nor shall it (or B.2., above) prohibit the utility from *also* proffering an exhibit or exhibits in the form of a fully projected test period (*in addition to the test period described in I.B.2. above*), provided (1) such period shall consist of twelve consecutive months ending not later than the end of the first year during which the proposed rates are to become effective; (2) it is supported by relevant testimony establishing a verifiable link between the test period defined in Section B.2. and the projected test period; and (3) it is in format consistent with such test period.

17. Staff also proposes that the last paragraph of Section I(C) be changed to read:<sup>1</sup>

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility at any time prior to its introduction of rebuttal evidence; provided, however, that if any party makes timely objection to the proffered modifications, such objections shall be promptly presented to the Hearing Examiner for a decision on due consideration of the parties' respective positions. For purposes of this Section I(C), an objection shall be timely if made within five (5) business days of the utility's proffer of modifications.

18. Staff asserts that the late-filing of changes to rate applications has become "a serious problem." (Tr. at 100-101.) Witness Schaffer testified that Staff's recent experience has been that utilities are making changes to their rate applications "later and later in the [rate review] process." (*Id.*) According to Mr. Schaffer, this tendency "makes it a lot more difficult for Staff to complete a case in a timely manner" and has become "a real drag on efficiency." (*Id.*) Staff contends that although the need for the proposed language changes is "compelling," it is also reasonable because it affords the Commission a reasonable opportunity to evaluate the changed data. (Ex. 10 at 2, 5.)

19. The DPA supports the Staff proposal and urges the Commission to place limitations on the changes that will be accepted<sup>2</sup> or to require the utility "to waive its right to implement interim rates within a seven-month statutory period." (Ex. 15 at 4.)

20. Delmarva contends that Staff's proposed changes to

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1. The proposed modifications are *italicized*.

Section I(C) are neither necessary nor appropriate. (Ex. 11 at 1.) Delmarva fully endorses UWD's position that the Commission should retain the "common practice" of allowing utilities to "file modifications with their rebuttal testimony because the information to be considered by the Hearing Examiner and the Commission should be as up-to-date as possible." (*Id.*; Ex. 12 at Exhibit "A", page 1.) Chesapeake joined Delmarva and UWD in recommending that if adopted, Staff's proposal should be amended to allow utilities to file modifications to test period data "up to and including its introduction of rebuttal evidence." (Ex. 12 at 3; Ex. 11 at 1-2; Ex. 13 at 1; Ex. 14 at 1.)

21. Discussion. The participants appear to have expended significant amounts of time and energy debating the issue of whether modifications to test period data, occasioned by known and measurable changes, ought to be filed "up until" or "prior to" the utility-applicant files its rebuttal testimony in a rate case. As interesting as the debate may have been to some, on closer examination, the problem is not of the magnitude that defies resolution. I see very little difference between "up until" and "prior to"; however, I will concede that "prior to" more accurately reflects what I believe was the Commission's original intent, *i.e.*, that modifications to test period occasioned by known and measurable changes should be made before a utility files its rebuttal testimony. I say this after considering the plain meaning of "rebuttal testimony," which, in the context of a rate case, means testimony filed by a utility which refutes or addresses issues raised by the Staff and/or intervenors in their direct testimony.

22. Generally, the utilities have taken the position that the Commission *must* consider all "late" or so-called "updated" data. Most of the utility-participants argue that not only should they be allowed to file data relating to changed circumstances, but also that such materials should be included in rebuttal testimony. (UWD at 4; DPL at 8-9)

23. I disagree with the contention that rebuttal testimony is the appropriate mechanism by which to introduce new material for consideration in a rate proceeding. As the Public Utility Act recognizes, in rate cases, the utility is the party that has possession of and control over most of the data that is necessary to develop the kind of evidentiary record which the Commission needs to make an informed judgment concerning the justness and reasonableness of proposed rate changes. This is why in all rate proceedings, the Act places the burden of proof on the utility. (26 *Del. C.* §307.)

24. Moreover, it is a ratemaking principle of long-

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2. In this regard, DPA suggests limiting the magnitude of changes to any component of a utility's revenue, expense or rate base claim to 10%. (Ex. 16 at 2.)

standing that, as a general rule, rates are examined within the confines of a test year and test period.<sup>1</sup> This means that there must be a cut-off period for the data that is used to determine appropriate rates for prospective application. What the utilities propose would turn this principle on its head, and the result would be to place the Commission in the untenable position of having to determine rates in a constantly changing evidentiary environment in which its investigative Staff could never fully examine all aspects of a utility's rate filing. This would severely impair the Commission's ratemaking ability and, therefore, would not be in the public interest.

25. On the other hand, I do not think it reasonable for the Commission to inflexibly preclude a utility from supplementing the record where appropriate. Citing a 1975 Superior Court decision, Delmarva and UWD argue that the Commission is bound to consider post-test year data in making its rate determinations. This suggests that Staff's proposed modifications to the MFR would be unlawful. I disagree. In the 1975 case, the Court held

Rate fixing is prospective: the rates should be just and reasonable in the foreseeable future as well as the present. Use of a test year for particular study is accepted practice. The test year, which is past experience, is evaluated as a basis for predicting the future. While the Commission has discretion in setting the test year, this does not mean that it may arbitrarily refuse to consider later available accurate information. (*Citations omitted.*) Later information is especially important as a check on the continuing validity of the test year experience in a period of rapid change like the present. Ignoring later information increases the likelihood of frequent costly and unsettling rate proceedings.

The policy of prompt decisions in rate proceedings . . . is important, but must be balanced against the Commission's ultimate duty of fixing just and reasonable rates. . . [The Commission] has broad powers of inspection, 26 Del. C. §125, and need not accept book entries without investigation.

1. The MFR defines the "test period" as consisting of "twelve consecutive months ending at the end of a reporting quarter utilized by the utility to support its request for relief. The test period may be the same as the test year or may include some of the months included in the test year and some months projected, such as six months 'actual' and six months 'projected', but may not include more than nine months 'projected'." MFR, Part A, Section I(B)(2)(b).

(*Citations omitted.*) It had already investigated Delmarva's 1972 accounts and accepted the statement of earnings. It does not appear, and there is no reason to assume, that the method of calculating the 1973 figures is significantly different. It is thus unlikely that *verification* of the 1973 figures would take undue time or effort. It was error, *under the circumstances*, not to consider this evidence . . . (*Emphasis added.*)

Application of Delmarva Power & Light Co., Del. Super., 337 A.2d 517, 518 (1975)

In my view, the Court's opinion is that in the particular circumstances cited, the Commission could, without taking undue time or effort, have *verified* the utility's later available material. Thus, while the Commission should consider later-available modifications to test period data, such consideration should be undertaken only where the Commission has a reasonable opportunity to investigate such data.

26. "Reasonableness," in this instance, would suggest to me circumstances under which such investigation would not unreasonably delay the ratemaking process. I do not, however, construe the Court's decision as requiring the Commission to accept any and all post-test year data that a utility wishes to fling at the Commission however late it may be into the seven month-ratemaking time-frame. The Court clearly recognized the need to establish a cut-off period within which the Commission can scrutinize the data upon which a utility has based its proposed rates. If the utility subsequently wishes to present any post-test year data for the Commission to consider, such data must be material and its tardiness should, at the very least, be caused by circumstances more compelling than the utility's ineptitude or desire to "game" the process.

27. In view of the foregoing, I find reasonable and recommend Commission adoption of Staff's proposed requirement that post-test year data be submitted "prior to" the filing of any rebuttal testimony. The proposed modifications do lend greater clarity to the Commission's intent that post-test year data should be presented before, not in conjunction with, the filing of rebuttal testimony.<sup>2</sup> Such timing will also ensure that the Commission's mandate to fully investigate all data upon a utility relies for its proposed rates will not be compromised.

28. There is nothing in this record upon which I can rely as a basis for adopting the DPA's recommendation that the Commission should limit the magnitude of subsequent changes to any component of a utility's revenue, expense, or

2. In this regard, for the sake of clarity, the language of Staff's proposal should be changed to read ". . . prior to its filing of rebuttal evidence."

rate base claim to 10%. In any event, in my opinion, consideration of any such limitations, if appropriate, are better dealt with on a case by case basis.

29. Section I(E). This section addresses Staff's review of rate increase applications for compliance with the Minimum Filing Requirements, and the penalties for noncompliance. Section I(E) now reads:

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and notify the utility within 30 days after the date of filing of any defects in compliance. The utility after such notification by the Commission Staff will then have 30 days to correct these defects. If such defects are not corrected, the Commission may reject a utility's rate application for non-compliance with the Minimum Filing Requirements.

Staff recommends that the first sentence of the section cited above be changed to read:<sup>1</sup> "The Commission Staff will review all *applications* for compliance with the format and instructions furnished herein and notify the utility within 30 days after the date of *application* of any defects in compliance."

30. In addition, Staff recommends that the following language be added to the end of Section I(E):

Notwithstanding anything to the contrary in this Section I(E), if such defects are, in Staff's discretion, so numerous or serious as to materially impair Staff's timely review of the application, Staff may reject the same thereby rendering it a nullity for all purposes (including without limitation the purposes contemplated under 26 Del. C. § 306), provided, however, that any such rejection by Staff may be challenged by the utility upon timely request for reconsideration to the Commission. For purposes of this Section I(E), a request for reconsideration shall be timely if presented in writing to the Commission within five (5) business days of Staff's rejection of the application to which it relates. In the event a utility's challenge to Staff's rejection of an application under this Section I(E) is successful, the application shall be reinstated *ab initio*. Nothing in this Section I(E) shall prevent a utility from filing an application in draft form for Staff's informal review and approval without prejudice, such informal review and approval not to be unreasonably withheld by Staff. The requirements of this Section shall be in addition to, and not in place of, the requirements of Rule 6.2 of

the Rules of Practice and Procedure of the Delaware Public Service Commission.

31. Staff contends that, contrary to the utilities' contentions, its proposal does not "vest new discretion in Staff" since Staff is already charged with identifying defects in rate applications and enforcing compliance with the MFR. (Ex. 10 at 5.) According to Staff, the change is not in kind but in degree. (Id.) Staff asserts that this change in the degree of its discretion is "manifestly needed" and, in light of the fact that Staff is now "inundated with work," the proposed change will have the salutary effect of increasing the utilities' compliance with the MFR. (Id.)

The DPA supports the Staff proposal. (Ex. 15 at 5.)

32. Delmarva contends that it is inappropriate "to give one party, Staff, a power to reject a filing by another party, subject only to an appeal right." (Ex. 11 at 2.) According to Delmarva, the current mechanism for addressing Staff's concerns appear to be adequate. (Id.) Delmarva asserts that under the Staff proposal, Staff would be given "a power that it does not currently have," and this results in bestowing on Staff a "litigation benefit" that would "shift[] a burden to the utility to justify why [its] filing should not be rejected." (Id.)

33. UWD argues that the Staff proposal would require the Commission to delegate its authority in a manner that is beyond the scope of the authority conferred on it by the Delaware General Assembly. (Ex. 12 at 3.) In addition, UWD contends, the Staff proposal is "offensive to the elementary notions of due process" because it would permit one party to exclude evidence offered by another party. (Id. at 3-4.) Furthermore, UWD asserts, "in the event that the presentation of modified material impacts the adequacy of the time for examination of the [utility's] case and development of the Staff and DPA position, then the utility should have the option to extend the statutory period of time for the Commission's decision," rather than having updated material excluded from consideration. (Id. at 4.) Accordingly, UWD recommends that Staff's proposed modifications should not be approved.

34. Chesapeake contends that the Staff should not have the power to render an application a "nullity" without first providing the utility with a reasonable period of time to correct the alleged deficiencies. (Ex. 14 at 1.) According to Chesapeake, there is no need to modify the existing procedure which would provide the utility with a 30-day period to correct any defects. (Id.) Under the current rule, if the utility fails to correct the defects, then the Commission may reject the application for noncompliance. (Id.) This provision is adequate and should be retained. (Id.)

35. Discussion . The utilities contend that the present provisions of Section I(E) should be retained. Staff, on the other hand, seeks to modify those provisions in a way that confers upon Staff the "discretion" to reject or dismiss defective utility rate applications. In my view neither

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1. The proposed modifications are *italicized*.

position is appropriate nor suitable for adoption. As currently structured and in instances where a utility presents a non-compliant filing for consideration, Section I(E) potentially impinges upon Staff's ability to review rate filings within the statutory time permitted. The outcome of such a scenario is that the Commission's ability to establish just and reasonable rates could be adversely affected.

36. The Staff position is inappropriate for the fundamental reason that procedurally, Staff is akin to a party prosecutor in all rate proceedings before the Commission. It is Staff's duty, after initial review, to litigate a utility rate case and develop an evidentiary record that forms the basis for a Commission decision on rates that are found to be just and reasonable. Indeed, Staff often takes positions adverse to those taken by the utility. Thus, to delegate to Staff the discretion to dismiss a filed utility rate application offends any reasonable perception of fairness.

37. Nonetheless, I can understand and empathize with Staff's discomfiture in dealing with defective rate applications under Section I(E) as currently constituted in the MFR. Among other things, the provisions of 26 Del. C. §306(2)(b) dictate that a utility may place its proposed rates into effect if the Commission has not made a decision concerning its application within seven months after the initial filing. This means that the seven-month regulatory clock begins ticking on the date of the initial filing. Section I(E) directs the Commission Staff to "review all filings for compliance with the format and instructions furnished [in the MFR] and notify the utility within 30 days after the date of filing of any defects in compliance." After such notification, the utility has another 30 days within which to cure the defects. Thereafter, the Commission "may reject the rate application for non-compliance with the [MFR]." (Id.) Thus, where a rate application is defective, Staff potentially stands to lose two months of the seven-month period in which it must review the application, litigate its position on the many complex issues that typically arise in rate proceedings, and work to bring this matter before the Commission for a final decision. Clearly, under such circumstances, Staff's ability to perform its function effectively could be significantly impaired. I am, therefore, convinced that the structure established under the MFR needs adjustment to some degree.

38. I believe that one reasonable solution to this problem would be for the Commission to redefine when a rate filing would be effected. At present, an application is deemed "filed" when it is delivered to the Commission's office. At that point, the application is date-stamped as having been received by the Commission. The presumption at the time is that the filing complies with the Commission's minimum filing requirements. However, rate-setting proceedings are a peculiar breed of dockets in that they are very time-sensitive and must be completed within in a statutorily mandated period. It is, therefore, of utmost

importance that a rate filing proceed in a manner that allows the Staff sufficient time to fully review and investigate all of the complexities that are so typical of rate cases.

39. In view of this need to keep rate proceedings on track, it is my recommendation to the Commission that it find that the mere delivery of rate applications and other filings that are of a time-sensitive nature will not be deemed filed until it has been determined that such filings have complied with applicable filing requirements. To effectuate this recommendation, the Commission should modify Section I(E) to read as follows:

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and, within 15 days after the date of filing, specifically identify any non-compliance of the requirements and immediately request the Commission Secretary to promptly notify the utility of the alleged defects in compliance. The utility after such notification by the Commission Secretary will then have 15 days to correct these defects. Upon receipt of the corrected application, the Commission Secretary shall promptly stamp, or cause to be stamped, such filing as having been duly filed with the Commission. If such defects are not corrected, the Staff may move the Commission to reject a utility's rate application for non-compliance with the Minimum Filing Requirements.

Nothing in this Section I(E) shall prevent a utility from filing an application in draft form for Staff's informal review and approval without prejudice, such informal review and approval not to be unreasonably withheld by Staff. The requirements of this Section shall be in addition to, and not in place of, the requirements of Rule 6.2 of the Rules of Practice and Procedure of the Delaware Public Service Commission.

40. The Commission has legal authority to implement the foregoing recommendations. Pursuant to 26 Del. C. §106 and 29 Del. C. §10111, the Commission may establish rules of practice and procedure to govern its proceedings. Moreover, the Commission's approval of the proposed rule changes would be consistent with the legislature's grant to the Commission of broad discretion to prescribe "duties and powers [for persons in its employ] as it deems necessary for the proper conduct of the work of the Commission." 26 Del. C. §108. Furthermore, the recommendation above is consistent with Rule 6(b) of the Commission's recently adopted *Rules of Practice and Procedure*, which authorizes the Commission Secretary to "reject any filing that does not conform to these rules."<sup>1</sup>

41. Other Proposed Changes . In addition to the changes discussed above, Staff has proposed other changes to Part “A”, Schedule No. 2-B (titled “Intangible Assets Claimed in Rate Base”), to the MFR’s explanatory memorandum (titled “General Information”), and to Section I (B) and (E) of Part “B” that are identical to the proposed changes to corresponding sections in Part “A”.<sup>1</sup> These changes are largely ministerial updates. They are unopposed, appear to be reasonable, and I recommend their adoption. I have summarized the proposed below for the Commission’s consideration.

42. Schedule No. 2-B . Part “A”, Schedule No. 2-B is titled “Intangible Assets Claimed in Rate Base.” This schedule includes a column heading titled “Revenue Included Test Year.” Staff recommends that this column heading be deleted.

43. Part “B”, Section I(B)Part ñBÑ, Section I(B) . This section provides a definition of the “test year,” and specifies the time period to be reflected by the test year. Staff recommends that the language of this section be replaced in its entirety by the language it proposes for the corresponding section within Part “A” of the MFR (including the language of the existing Sections I(B)(2)(a) and (b) of Part “A”, which remain unchanged under Staff’s proposals).

44. Part “B”, Section I(E)Part ñBÑ, Section I(E) . Part “B”, Section I(E) of the Minimum Filing Requirements addresses Staff’s review of applications for compliance therewith and the penalties for non-compliance. Staff recommends identical changes to those it proposes for the corresponding section within Part “A” of the MFR.

45. General Information . The MFR include an explanatory memorandum entitled “Minimum Filing Requirements - General Information.” Under the heading “Part A - Rate Increase Applications - Major Utilities,” this document includes a brief explanation of the applicability of Part “A” of the Minimum Filing Requirements. The first sentence of that explanation now reads: “Part A applies to utilities or divisions thereof with annual gross intra-State revenues of \$1 million or more.” Staff proposes to add the following parenthetical language at the end of the sentence: “(at the time of filing).”

46. The second paragraph of the explanation now

1. The Commission should also, in the near future, consider updating Rule 6 of its *Rules of Practice and Procedure* to reflect the special requirements for rate applications as detailed in the MFR.

1. Since Part “B” is identical to Part “A” (except that it applies to smaller utilities), the Part “B” changes must, for consistency, mirror the Part “A” changes.

reads:

Based on 1978 intra-State revenue levels, the following Delaware utilities would be subject to Part A at the present time:

Artesian Water Company  
Chesapeake Utilities Corporation  
Delmarva Power & Light Company (Electric Division)  
Delmarva Power & Light Company (Gas Division)  
Rollins Cablvue, Inc.  
The Diamond State Telephone Company  
Wilmington Suburban Water Corporation

Staff proposes to delete this paragraph.

47. Lastly, the General Information includes a corresponding explanation of the applicability of Part “E” of the Minimum Filing Requirements entitled “Part E - Quarterly Reporting Requirements - Major Utilities.” The first sentence under this heading now reads: “All major utilities subject to the jurisdiction of the Commission (those with annual gross intra-state revenues of \$1 million dollars or more shown in Part A of these instructions) are required to file quarterly information in accordance with the instructions contained in Part E.” Staff proposes to revise this sentence to read: “All major utilities, except Bell Atlantic-Delaware, Inc., subject to the jurisdiction of the Commission (*i.e.*, those with annual gross intra-state revenues of \$1 million dollars or more) are required to file quarterly information in accordance with the instructions in Part E.”

48. DPA ProposalsDPA Proposals . The Public Advocate recommended several additional MFR modifications to those proposed by Staff, to wit:

- That Part “A”, Section II, (A) be modified to require a “Description of the Company” in all cases.
- That Part “A”, Section III(B) be modified to require utilities to file two years of Annual Reports to Stockholders, Securities and Exchange Commission (“SEC”) 10K Reports, and securities prospectuses with its application, regardless of whether such documents may also be on file with the Commission.<sup>2</sup>
- That Part “A”, Sections IV(C)(2), (E)(2), and (I)(1) be modified to the “thirteen-month average.”
- That Part “A”, Section V(B)(2) be modified to include

2. In this regard, the DPA also recommends that if the Commission does not have on file the remaining three years of data, then the utility should be required to file all five years of data for these items. (Ex. 16 at 3.)

10 years of unit sales data and that such information be provided by rate class.<sup>1</sup>

•(Ex. 16 at 3-4.)

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49. With respect to Part “B” of the MFR, the DPA made the following recommendations:

That Part “B”, Section II(A) be modified to require all applicants to provide the “Description of Company,” even if some of this information may already be on file with the Commission.

That Part “B”, Section V(A)(6) be modified to require small utilities to provide at least five years (and preferably ten years) of average customer count data and unit sales, by customer class.

(Id. at 4.)

50. In written comments, Chesapeake opposed the DPA’s additional recommendations, asserting that the purpose of this docket was to consider the Staff recommendations. (Ex. 14 at 2.) According to Chesapeake, the proposed changes and amendments to the MFR advocated by the DPA were not included in the public notice of this proceeding; therefore, it would be inappropriate to consider them at this time.

51. Discussion . Except for the concerns expressed by Chesapeake regarding the lack of notice of the DPA’s additional proposals, neither Staff, nor any other participant commented on those proposals. Arguably, the parties were, to a limited extent aware of the DPA’s proposals, which first appeared in initial comments filed in April 1999. (See Ex. 15.) Other than the DPA’s initial comments and Position Statement, there is very little in this record that lends support to a conclusion that these recommendations should be adopted. (Ex. 15 and 16.) Indeed, at the September 22, 1999 hearing, DPA witness Crane conceded that 10K filings with the Securities Exchange Commission (“SEC”) are available from a publicly accessible data base and that 10-year sales data is available through the normal discovery process. (Tr. at 194-195.) Thus, there would appear to be no compelling reason at this time for me to recommend that the Commission adopt these additional modifications. Accordingly, I decline to make such a recommendation.

#### IV. RECOMMENDATIONS

52. In summary, and for the reasons discussed above, I propose and recommend the following changes to the *Minimum Filing Requirements For General Rate Increase Applications*:

A) That Part A, Section I(B)(1) be modified as set

1. In addition to providing unit sales data for this 10-year period, the DPA recommends that the utility also provide 10 years of average customer count data, by customer class. (Id. at 4.)

forth and discussed in ¶¶ 13 and 14, above;

B) That the Commission adopt in their entirety the Staff-proposed modifications to Part A, Section I(C) as set forth in ¶¶ 16 and 17 above;

C) That the Commission modify Part A, Section I(E) as recommended herein and set forth above at ¶ 39; and

D) That, as discussed above, the Commission adopt all other proposed changes to Part A, Schedule No. 2-B, the “General Information” Section, and Sections I(B) and I(E) of Part B; and

E) That the Commission decline to adopt the additional changes proposed by the Division of the Public Advocate.

Respectfully submitted,

G. Arthur Padmore  
Hearing Examiner

Dated: November 30, 1999

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF COSMETOLOGY & BARBERING**  
Statutory Authority: 24 Delaware Code,  
Section 5106(14) (24 **Del.C.** 5106(14))

**ORDER ADOPTING RULES AND REGULATIONS**

**AND NOW**, this 31<sup>st</sup> day of January, 2000, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Barbering and Cosmetology of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

**Nature of the Proceedings**

The Board proposes to add a provision to one of its existing rules, pursuant to its authority under 24 *Del.C.* §5106(1). Notice of the public hearing on the Board's proposal was published in the Delaware *Register of Regulations* on November 1, 1999 and in two Delaware newspapers of general circulation, all in accordance with 29 *Del.C.* §10115. The public hearing was held as noticed on November 29, 1999. The Board continued accepting written comments on the proposed addition until December 1, 1999. The Board deliberated on the proposed addition at its

November 29, 1999 meeting and unanimously voted to adopt the rule addition. The Board's deliberation and vote was taken with the understanding that if any written comment were to be timely received, the Board would fully consider this comment and then deliberate and vote anew at its next meeting. No further written comments were received during the written comment period. This is the Board's Decision and Order ADOPTING the regulation as proposed.

**Evidence and Information Submitted at Public Hearing**

The Board received no written comments in response to the notice of its intention to adopt the proposed Regulation prohibiting the use of methyl methacrylate (hereinafter "MMA"). No verbal comment was received at the November 1, 1999 public hearing. Two documents were marked as Board exhibits at the hearing: a copy of the Joint Sunset Committee Meeting Minutes, dated March 2, 1998, which discuss MMA, and a copy of selected pages from the Final Report of the Nail Technology Task Force, which also discuss MMA.

**Findings of Fact and Conclusions**

The Board has proposed an addition to its current Rule 16.3 to provide that "*The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of*

MMA.”

As outlined in the preceding section, the public was given the required notice of the Board’s intention to adopt a regulation and was offered an adequate opportunity to provide the Board with comments on the proposed regulation. The Board concludes that its consideration of the proposed Rule and Regulation is within the Board’s general authority to promulgate regulations under 24 *Del.C.* §5106(1). In addition, specific statutory authority for the Board’s prohibition of MMA by regulation is found at 24 *Del. C.* §5106(14).

The Board finds that the use of methyl methacrylate creates an unreasonable and unnecessary risk of injury to the health of both clients and practitioners. MMA has been designated as a “hazardous air pollutant” under federal law. 42 U.S.C.A. §7412(b). Nail care professionals presented their concerns about the risks of MMA to the Sunset Committee and the Legislature passed a statute specifically authorizing its prohibition. The Nail Technology Task Force, created by Senate Concurrent Resolution 83, created a final report, in June 1999, which stated that “MMA is a hazardous chemical that can cause serious damage to nails of the consumer and the health of the practitioners.” The Board noted that, in addition to noxious fumes during use, MMA can cause nail breakage and bleeding.

In summary, the Board concludes that the proposed addition to its Rules and Regulations is necessary for the enforcement of 24 *Del.C.* Chapter 51, and for the full and effective performance of the Board’s duties under that Chapter. The Board also finds that adopting the regulation as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health of the general public, particularly the recipients of services of cosmetology, barbering and affiliated professions, as well as licensed practitioners. The Board, therefore, adopts the proposed addition to Rule and Regulation 16.3, as set forth in Exhibit “A” attached hereto.

### ORDER

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board of Cosmetology and Barbering, **IT IS HEREBY ORDERED THAT:**

1. The proposed addition to Rule and Regulation 16.3 is *approved and adopted* in the exact text attached hereto as Exhibit “A”.

2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 *Del.C.* §10118(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BY ORDER OF THE BOARD OF COSMETOLOGY AND BARBERING (as authenticated by a quorum of the Board):

Miriam Harris, President, Professional Member  
Orin F. Burdette, Vice-President, Professional Member  
Bonnie Paynter, Secretary, Professional Member  
John Bonarigo, Professional Member  
Rene Brickman, Professional Member  
Preston Dyer, Professional Member  
Abby Lynn Betts, Public Member  
Vera Murrell, Public Member  
Myrtle Shockley, Public Member

### Delaware Board of Cosmetology and Barbering

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology
- 4.0 Instructor Requirements
- 5.0 Reciprocity Requirements
- 6.0 Equipment for Cosmetology and Barbering Schools
- 7.0 Equipment for Nail Technology Schools
- 8.0 Equipment for Electrology Schools
- 9.0 Course outline for Aesthetician
- 10.0 Equipment for Aesthetics Schools
- 11.0 Registration of Salons and Schools
- 12.0 Apprenticeship and Supervision
- 13.0 Transfer of Nail Technician Hours to Cosmetology Programs
- 14.0 Licensure Requirements
- 15.0 Foreign Diplomas
- 16.0 Health and Sanitation: Electric Nail Files and Laser Technology

#### 1.0 Demonstrations

1.1 Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 *Del.C.* 5103 (1))

#### 2.0 Temporary Work Permits

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant’s scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 Del.C. 5106 (7)

### 3.0 Instructor Curriculum for Barbering and Cosmetology

#### 3.1 Course Outline - Instructor 500 Hours

Subject Matter	Minimum Clock Hours
Orientation	50
Practical Laboratory Management	200
Classroom Teaching and Management	200
Theory and Testing	50

#### 3.2 Course Outline - Instructor 250 Hours

Subject Matter	Minimum Clock Hours
Orientation	25
Practical Laboratory Management	100
Classroom Teaching and Management	100
Theory and Testing	25

(24 Del.C. Subsection 5106(13))

### 4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. 5106 (13)).

### 5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent

requirements than Delaware, would be required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application.

Reference Section 2 for temporary work permit. (24 Del.C. 5109(a))

### 6.0 Equipment for Cosmetology and Barbering Schools

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).
- 6.1.5 (4) Wet sterilizers (sanitizers).
- 6.1.6 (6) Dozen permanent wave rods.
- 6.1.7 (2) Reclining chair with headrest.
- 6.1.8 (1) Mannequin per student.
- 6.1.9 (12) Work Stations.
- 6.1.10 Mirrors and chairs.
- 6.1.11 (1) Locker for each student.
- 6.1.12 (4) Closed containers for soiled linen.
- 6.1.13 (3) Closed waste containers.
- 6.1.14 (1) Container for sterile solution for each manicure table.
- 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 6.1.17 (1) Cabinet for towels.
- 6.1.18 An arm chair or usable table and chair for each student in the theory room.
- 6.1.19 (3) Timer clocks.
- 6.1.20 Attendance records.
- 6.1.21 (1) Soap machine.
- 6.1.22 (1) Textbook for each student.

(24 Del.C. 5117 (a))

### 7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.

7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.

7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.

7.1.12 Attendance Records.

7.1.13 Reception Desk.

7.1.14 Proper Ventilation.

7.1.15 (4) Dry Sterilizers.

7.1.16 (4) Wet Sterilizers.

7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del C. Subsection 5117 (a))

#### 8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.

8.1.2 (1) All purpose chair or lounge.

8.1.3 (1) Magnifying lamp (wall mounted or on a stand).

8.1.4 (1) Tweezers for each student.

8.1.5 (1) Movable table for the epilator.

8.1.6 (1) Adjustable stool on wheels.

8.1.7 All needles used for treatment must be disposable type only.

8.1.8 Sterilizing materials and rubber gloves.

8.1.9 (1) Textbook for each student.

#### 9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 Del.C. 5132(a))

#### 10.0 Equipment for Aesthetics Schools

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.

10.1.2 (1) All purpose chair or lounge.

10.1.3 (1) Magnifying lamp (wall mounted or on a stand).

10.1.4 (1) Adjustable stool on wheels.

10.1.5 Sterilizing materials and rubber gloves.

10.1.6 (1) Textbook for each student.

(24 Del.C. 5130(a))

Above Rules and Regulations effective on 8/29/94

#### 11.0 Registration of Salons and Schools

11.1 A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. 5117)

Section 11 effective on 12/28/94

#### 12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. 5107)

#### 13.0 Transfer of Nail Technician Hours to Cosmetology Programs

13.1 Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 Del.C. 5107)

Section 12 and 13 effective October 30, 1996

#### 14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology

establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 Del. C § 5113(a)(b). (24 Del.C. 5103)

15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

16.0 Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a

grounds for discipline under section 5113 of Title 24 Del. C. (24Del C. 5100, 5101(4), 5112 and 5113)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122 (16 Del.C. 122)

**In the Matter Of:** |  
**Adoption of State of Delaware** |  
**Rules and Regulations Governing** |  
**The Control of Communicable** |  
**And Other Disease Conditions** |

**Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the Control of Communicable and Other Disease Conditions. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122.

On June 1, 1999 (Volume 2, Issue 12) and on July 1, 1999 (Volume 3 Issue 1), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 2, 1999, or be presented at a public hearing on July 29, 1999, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

A summary of the comments is part of the accompanying "Summary of Evidence."

**Findings of Fact:**

The Department finds that the proposed amendments to Section 7.3 of the regulations, pertaining to Sexually Transmitted Diseases, shall not be adopted at this time.

Exclusive of the proposed amendments to Section 7.3 as described above, the Department finds that the proposed amendments as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware. The proposed amendments include modifications from those published in the June 1, 1999 Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed amendments to the Rules And Regulations Governing Control of Communicable and Other Disease Conditions are adopted as modified except the proposed amendments to Section 7.3. DHSS takes no action on the proposed amendments to Section 7.3. The remaining proposed amendments shall become effective March 15, 2000 after publication of the final regulation in the Delaware Register of Regulations.

Gregg C. Sylvester, MD, Secretary  
February 14, 2000

**Summary of Evidence**  
**State of Delaware Proposed Revisions to the**  
**Communicable Disease Regulations**

**Background**

A public hearing was held on July 29, 1999, in the auditorium of the Richardson Robbins Building (Department of Natural Resources and Environmental Control) in Dover, Delaware, before Paul R. Silverman, Hearing Officer, to discuss the proposed Department of Health and Social Services Rules and Regulations Governing the Control of Communicable and Other Disease Conditions. The announcements regarding the hearing were advertised in the Delaware State News, the News Journal, and the Delaware Register of Regulations in accordance with Delaware Law. In addition to public notice required by the Administrative Procedures Act, the public notice included personally addressed letters to those persons and organizations that Division of Public Health (DPH) staff believed would be impacted by the proposal. The proposed revisions were reviewed and approved for public comment by the Deputy Attorney General. In addition to oral presentations given at the time of the hearing, a significant number of written comments were received by mail, fax, and e-mail, and were considered in detail.

This document describes the proposed regulatory revisions, notes those of which comments were made, and provides a summary explanation for recommended actions based on the comments. This discussion omits those suggestions that were of a purely typographical, organizational, or grammatical nature and which otherwise did not affect the content or intent of the proposed regulatory revisions. Because most of the comments on the proposal pertained to sexually transmitted disease (STD), this document is in two parts. Part A includes the proposed regulatory revisions other than STD. Part B addresses STD, where the comments are discussed and analyzed in depth.

**Part A**

**Proposed Regulatory Revisions Other than STD**

**General Revisions**

DPH proposed changes in the Regulations that would update organizational nomenclature and strike language that exclusively addresses internal procedures. Changes would also include corrected grammar, clarified meaning, or added consistency to existing language. These changes would be located throughout the document.

Public testimony: no opposing comments received

**Patient Contact**

A proposed change to Section 3.4.2 would allow Division investigators to consult directly with patients when the practitioner who had reported the case was unavailable or when such consultation was necessary in order to avoid delaying timely investigation or control of a communicable disease.

Public testimony: no opposing comments received

**Date of Birth**

Various sections contain a proposed change of reporting requirement from age to date of birth when it is available. This is of value in investigations for identifying patients, due to its greater precision.

Public testimony: no opposing comments received

**Antibiotic Resistance**

Section 3.4.4 was a proposed new requirement for the reporting of certain antibiotic resistant organisms. These organisms would be designated as the need for surveillance on new antibiotic resistant pathogens arises, and published in a new Appendix II of the regulations. The proposal also included the naming of several antibiotic resistant pathogens in Appendix II of the regulations.

Public testimony: A hospital commented that the logistical impact of reporting some antibiotic resistant organisms would be a hardship, and questioned the public health benefit.

Recommendation: Modify the proposal to require only the reporting of vancomycin resistant *Staphylococcus aureus*. The proposal to report three other resistant organisms should be eliminated. This recommendation is acceptable to the institution that commented. We do not consider this to be a substantive change to the original proposal. Drug resistant *Streptococcus pneumoniae* was already a notifiable disease and will be moved from Appendix I to Appendix II

**Notifiable Disease List**

The proposal included several changes to the notifiable disease list such as the addition of emerging pathogens. In addition, several diseases, already on the notifiable disease list, are proposed to be reported by rapid means instead of mail.

Public testimony: no opposing comments received

Recommendation: Although no comments were received on this proposal, a recent event in Kent County suggests that it is important that non-meningitis meningococcal infections be reported by rapid means. Therefore we recommend the proposed regulatory revision be amended to include this requirement. We do not consider this to be a substantive change to the original proposal.

### **Immunizations**

Prior versions of the regulations required specified childhood vaccinations at specified ages and intervals for day care enrollees and children attending private school. The proposed revision in Section 7.1 (now renumbered to Section 6.1) would allow the DPH Director to name diseases for which vaccination is required, and defer to the recommendation by the American Advisory Committee on Immunization Practices, for the specific vaccine and schedule. The proposed revisions would also mandate reporting by health care providers to the Immunization Registry and specify with whom DPH is authorized to share immunization information from the Registry. These latter requirements will enormously improve the usefulness and future value of the Registry and will allow its future improvement through electronic access (Intranet, Internet, etc.).

Public testimony: While no comment was received on the proposed changes described above, it was suggested that the minimum number of days between measles vaccine doses in Section 7.1.13 (now 6.1.13) be changed from 30 to 28 for consistency with DPH Standing Orders.

Recommendation: The proposed regulatory revision be modified to include a change in the number of days between measles vaccine doses in Section 7.1.13 from 30 to 28 days. We do not consider this to be a substantive change to the original proposal.

### **Tuberculosis**

Proposed revisions to Section 7.4 (now renumbered to Section 6.4) would add specific reporting requirements for suspect and diagnosed cases of tuberculosis, for multiple drug resistant strains; and for non-compliance with medications. A proposed change to an archaic statement regarding public payment for hospitalization would require such payment only when third party funds are not available.

Clear authority would be given to DPH to identify and test household contacts of new tuberculosis cases. A new Section would be added to (1) require that health care practitioners meet current American Thoracic Society Tuberculosis treatment guidelines or refer patients to DPH for care; (2) make directly observed therapy the standard of care; and (3) require that the practitioner provide related treatment information to DPH upon request.

Public testimony: no opposing comments received

### **Part B**

## **Proposed Regulatory Revisions on Sexually Transmitted Diseases**

### **Introduction**

Virtually all comments at the public hearing, and in the correspondence associated therewith, related to three issues:

- Issue 1: Named reporting verses a unique identifier system.
- Issue 2: Concern that anonymous testing would no longer be available
- Issue 3: Reporting by providers of partners to newly infected cases.

### **Issue 1: Named reporting verses a unique identifier system (UIS)**

Public comment identified the following issues with respect to named reporting verses UIS:

- The relative ability of both surveillance system to be complete and accurate;
- Confidentiality and security of the reported information;
- Designation of HIV as a regulatory defined STD;
- The potential of named reporting to discourage HIV testing and counseling.

### **Issue 2: Concern that anonymous testing would no longer be available**

The primary objection and concern raised in the public comment period among those who object to named reporting is the fear that individuals who should be tested will fail to do so because of their concerns about loss of confidentiality. It should be noted that DPH never intended to discourage anonymous testing by proposing named-based reporting.

### **Issue 3: Reporting by providers of partners to newly infected cases.**

Concerns were expressed regarding the proposed requirement for providers to report exposed partners who may not be aware of their risk. Such concerns were related to

the confidentiality of information and the burden of reporting. It should be noted that DPH's intent was that when the provider knows that the newly diagnosed patient's partner has been made aware of their potential exposure and has been counseled on how to protect his or herself, NO such reporting by the provider to DPH will be required.

### Part B Recommendations

Reviews of the available information regarding HIV surveillance has revealed that there are compelling reasons to implement HIV surveillance in Delaware. No public comments were received to the contrary.

However, given public comment concerning the manner in which HIV reporting will be carried out (name verses unique identifier), the Department chooses not to adopt the proposed regulatory amendments pertaining to STD at this time.

## PART I

### Applicable Codes

These regulations are adopted by the ~~Delaware State Board of Health~~ Department of Health & Social Services pursuant to 16 Del. C. §122(1), (2), (3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations ~~are~~ were originally adopted on August 2, 1984 ~~and are~~ effective September 1, 1984, and subsequently amended.

## PART II

### Definitions

When used in Parts II and III, the following terms shall mean:

1. "Carrier" - A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.

2. "Case" - A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.

3. "Child Care Facility" - Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

4. "Communicable Disease" - An illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

5. "Contact" - A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

~~"Designated Representative" - The person officially named by the Local Health Unit Administrator or the Section Chief to represent and to carry out the functions of the Division Director or designee Unit or the Section, respectively, in the absence of the Division Director or designee Unit Administrator or the Section Chief.~~

6. "Designee" - The person named by the Director of the Division of Public Health to assume a specific responsibility.

7. "Division Director" - The Director of the Division of Public Health.

8. "Directly Observed Therapy (DOT)" - an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

9. "Epidemic" or "Outbreak" - The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy.

~~"Immunizations" - DPT is diphtheria, tetanus, and pertussis, DT is diphtheria and tetanus, Td is tetanus, diphtheria toxoids, OPV is oral Polio vaccine, IPV is injectable polio vaccine~~

~~"Local Health Unit" - The main offices of the Division of Public Health which are located in Kent, Sussex and New Castle Counties.~~

~~New Castle Local Health Unit  
2055 Limestone Road  
Wilmington, DE 19804  
995-8650~~

~~Kent Local Health Unit  
805 River Road  
Dover, DE 19901  
736-5305~~

~~Sussex Local Health Unit  
544 South Bedford Street  
Georgetown, DE 19947  
856-5355~~

~~"Local Health Unit Administrator" - The person officially named by the Division of Public Health Director responsible for the operations within a local health unit.~~

10. HIV Infection - repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example

p24 antigen); or a positive result on any other highly specific licensed test for HIV.

11. "Medical Examiner" - A physician appointed pursuant to 29 Del. C. §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

12. "Nosocomial Disease" - A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission.

13. "Notifiable Disease" - A communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

14. "Notification" - A written or verbal report as required by any section of these Rules.

15. "Outbreak" - Refer to definition of "Epidemic".

16. "Post-Secondary Institution" - Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

17. "Quarantine" - An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. ~~The Division Director or designee The Local Health Unit Administrator or the Section Chief~~ shall determine which persons or animals are subject to quarantine and shall issue appropriate instructions.

18. "Resistant Organism" - Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective.

~~["Section" - The Health Monitoring and Program Consultation Section of the Division of Public Health]~~

~~"Section Chief" - The Chief of the Health Monitoring and Program Consultation Section, Division of Public Health.~~

19. "Sensitive Situation" - A setting, as judged by the Director of the Division of Public Health or his designate designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

20. "Source of Infection" - The person, animal, object or substance from which an infectious agent passes directly to the host.

21. "Suspect" - A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a communicable disease condition.

**PART III**

**Regulations**

Section 1. Notifiable Diseases or Conditions to be Reported

The ~~list of~~ notifiable diseases ~~or conditions (notifiable diseases)~~ specified in the Appendix Appendices to these regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those ~~who at the time of death were so affected identified after death,~~ shall be reported as defined in Section 3 to the ~~Local Health Unit Administrator~~ Division of Public Health. Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N). ~~The Section~~ Division of Public Health may list additional diseases and conditions on its reporting forms for which reporting is encouraged but not required.

Section 2. Report of Outbreaks

Any person having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the ~~Local Health Unit Administrator~~ Division Director or designee.

Section 3. Reporting of Notifiable Diseases

3.1 Attending Practitioners

Reports required by Sections 1 and 2 shall be made to the Division Director or designee ~~Local Health Unit Administrator~~ by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.

3.2 Others

In addition to those who are required to report notifiable diseases, the following are requested to notify the Division Director or designee ~~Local Health Unit Administrator~~ of the name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no practitioner, as in Section 3.1 above, has been consulted: every parent, guardian, householder; every nurse, every dentist, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food

storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, jail, or juvenile detention center.

### 3.3 Hospitals

3.3.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

3.3.2 Such case reports shall be made to the Division Director or designee Local Health Unit Administrator within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.

3.3.3 Reporting of a case or suspect case of notifiable disease by a hospital fulfills the requirements of the attending practitioner to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 3.1.

3.3.4 The hospital reporting officer shall also report to the Division Director or designee Local Health Unit Administrator communicable diseases not specified in Section 1, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health.

### 3.4 Laboratories

3.4.1 ~~All laboratories~~ Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiological examination shall report results of laboratory examinations of specimens indicating or suggesting the existence of a notifiable disease to the Division of Public Health Local Health Unit Administrator within 48 hours of when the results were obtained or as soon as possible, except as otherwise provided in these regulations.

3.4.2 ~~The Director or designee Local Health Unit or Section personnel~~ may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of the a communicable disease. ~~[See Section 7.42 regarding similar requirements for sexually transmitted diseases.]~~

3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.

3.4.4 Reporting of antibiotic resistant organisms

Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism as listed in Appendix II, will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/Zone diameter to the Division of Public Health. In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

### 3.5 Confidentiality

Information identifying persons or institutions submitted in reports required in Sections 3.1 - 3.4 shall be held confidential to the extent permitted by law.

### 3.6 Information in Reports

Information included in reports required in Sections 3.1-3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, ~~age~~ date of birth, race, gender, and disease of the person ill or infected; the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.

## ~~Section 4. Reports by Division Director or designee Unit Administrator to the Section Chief~~

### ~~4.1 Surveillance/Investigation Case Reports for Individual Cases~~

~~Each Division Director or designee Unit Administrator shall submit a surveillance/investigation case report to the Section Chief for each individual case of those diseases on the notifiable disease list when requested by the Section. Surveillance/Investigation case reports shall be submitted promptly as soon as the case investigation is complete. Such reports shall be made on the required forms provided through the Section.~~

### ~~4.2 Outbreak Reports and Special Reports~~

~~If investigation or reports by the Division Director or designee Unit Administrator confirms an outbreak or an epidemic of a notifiable disease or other disease condition or if the Division Director or designee Unit Administrator is informed of the occurrence or suspicion of the occurrence of any single case of a notifiable disease which has significant epidemic potential, the Local Health Unit Administrator shall report such occurrence or suspicion immediately by telephone to the Section Chief. The Local Health Unit Administrator, Section Chief, or either of their designated representatives may ask for an investigation involving several disciplines within the Division of Public Health.~~

### ~~4.3 Reports of Morbidity~~

~~The Local Health Unit Administrator shall forward all individual reports of disease containing the information~~

specified in Section 3.6 to the Section. Such reports shall be made in a manner and on forms specified by the Section.

Section ~~[5.1]~~[4.1] Investigation of Case

~~[5.1]~~[4.1] Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the ~~Local Health Unit Administrator~~ Director of the Division or designee shall ~~may~~ take action as ~~required~~ permitted in these Rules, and additionally as ~~he deems~~ deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, ~~he~~ the Director of the Division or designee shall ~~may~~ make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious, and obligatory medical treatment in order to prevent the spread of disease in the community.

5.2 ~~Suspected Source Outside County but Within Delaware~~

If the disease is one in which identification of the source of infection is important, and if the source of the infection is thought to be outside the county in which the case is reported but within Delaware, the Local Health Unit Administrator shall notify within 24 hours by telephone or in writing the Local Health Unit Administrator in whose county it is thought the source of infection is located.

5.3 ~~Suspected Source in Another State or Country~~

5.3.1 If the source of infection is thought to be outside Delaware, the Local Health Unit Administrator shall notify the Section Chief. The Section Chief shall notify within 24 hours by telephone or in writing the Director of the State Health Agency in whose jurisdiction it is thought the source of the infection is located.

5.3.2 If the source of infection is thought to be in another country, the report shall be made to the Section Chief for transmittal to the Centers for Disease Control (CDC).

5.4 ~~Exposed Persons Outside Jurisdiction~~

~~Notification as described in Sections 5.2 and 5.3 shall be given if there are believed to be exposed persons requiring identification and follow-up outside the jurisdiction of the Local Health Unit Administrator in which the case was reported.~~

~~[5.2]~~[4.2] Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized warrant or court order shall be presented to show just cause in instances where the suspect refuses such

examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the ~~Local Health Unit Administrator, the Section Chief, or their designated representatives~~ Division Director or designee.

~~[5.3]~~[4.3] Sensitive Situations

~~[5.3.1]~~[4.3.1] No person known to be infected with a communicable disease or suspected of being infected with a communicable disease shall engage in sensitive situations as defined in Part II of these regulations until ~~determined~~ judged by the ~~Local Health Unit Administrator, the Section Chief, or either of their designated representatives~~ Division Director or designee to be ~~either~~ either free of such disease or ~~[that the public health is]~~ no longer a threat to public health, incapable of transmitting the infection. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

~~[5.3.2]~~[4.3.2] When, pursuant to Section ~~[5.6.1]~~[4.3.1], it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a communicable disease, the ~~Local Health Unit Administrator or his designated representative~~ Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a communicable disease and to that person's employer or other such individual responsible for the sensitive situation.

~~[5.3.3]~~[4.3.3] The ~~Local Health Unit Administrator~~ Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a communicable disease that, in the opinion of the ~~Local Health Unit Administrator, Division Director or designee~~ significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

- (a) unusual diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;
- (b) fever (100°F by oral thermometer or 101°F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.
- (c) any other symptoms which, in the opinion of the ~~Local Health Unit Administrator or his designated representative, Division Director or designee~~ suggest the presence of a communicable disease that significantly threatens the public health. Exclusion from a childcare

facility in this case shall be effective upon written notification pursuant to Section ~~[5.6.2]~~[4.3.2].

Section ~~[6]~~ [5] Quarantine

~~[6.1]~~ [5.1] Establishment

When quarantine of humans is required for the control of any notifiable disease or other disease or condition, the Division Director or designee ~~or the Director of Public Health or their designated representatives~~ shall have the authority to initiate procedures to establish a quarantine.

~~[6.2]~~ [5.2] Requirements

~~[6.2.1]~~ [5.2.1] The ~~Local Health Unit Administrator~~ Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.

~~[6.2.2]~~ [5.2.2] Quarantine orders shall be in effect for a time period in accord with accepted public health practice.

~~[6.3]~~ [5.3] Transportation

~~[6.3.1]~~ [5.3.1] Transportation or removal of quarantined persons may be made only with prior approval of the appropriate Division Director or designee ~~Local Health Unit Administrator, the Section Chief, or either of their designated representatives.~~

~~[6.3.2]~~ [5.3.2] Transportation or removal of quarantined persons shall be made in accordance with orders issued by the Division Director or designee ~~Local Health Unit Administrator, the Section Chief, or either of their designated representatives.~~

~~[6.3.3]~~ [5.3.3] Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.

~~[6.4]~~ [5.4] Disinfection

~~[6.4.1]~~ [5.4.1] Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee ~~Local Health Unit Administrator, the Section Chief or either of their designated representatives.~~

~~[6.4.2]~~ [5.4.2] Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee ~~Local Health Unit Administrator, the Section Chief, or either of their designated representatives.~~

Section ~~[7]~~ [6] Control of Specific Communicable Diseases

~~[7.1]~~ [6.1] Vaccine Preventable Diseases

~~[7.1.1]~~ [6.1.1] All preschool children who are enrolled in a child care facility must be age-appropriately

vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. ~~have attained 18 months of age who are enrolled in a child care facility must have documented proof of receiving a minimum of: 4 doses of Diphtheria, Tetanus, Pertussis (DTP) or Diphtheria, Tetanus (DT) Vaccine; and 3 doses of Oral Polio Vaccine (TOPV) or 3 doses of Inactivated Polio Vaccine (IPV); and, 1 dose each of Measles, Mumps and Rubella Vaccines given after the age of 15 months (Measles, Mumps & Rubella (MMR) is the preferred vaccine to meet this requirement); and Hib Conjugate Vaccine (HbCV) in a schedule determined by the American Immunization Practices Advisory Committee.~~

~~7.1.2 All preschool children less than 18 months of age who are enrolled in child care facilities must have documented proof of being immunized according to the following schedule.~~

Age Immunizations Received

2 months 1 dose each of DTP, (or DT), and TOPV (or IPV)

4 months 2nd dose of DTP, (or DT), and TOPV (or IPV)

6 months 3rd dose of DTP (or DT), TOPV not required.

~~15 months 4th dose of DTP, (or DT), 3rd dose of TOPV (or 3rd dose of IPV), 1 dose each of Measles, Mumps and Rubella Vaccine (MMR is the preferred vaccine to meet this requirement).~~

~~Hib Conjugate Vaccine (HbCV) in a schedule determined by the American Immunization Practices Advisory Committee.~~

~~[7.1.2]~~ [6.1.2] Any child entering private school must have documented proof of receiving be age-appropriately vaccinated against diseases prescribed by the Division Director. ~~a minimum of the following vaccines, appropriate for their age, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation.~~ This provision pertains to all children between the ages of 2 months and 21 ~~18~~ years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools.

~~4 doses of DTP, DT (or Td vaccine), of which the first dose should be given at 6 weeks of age and the second and third dose given 4-8 weeks after the preceding dose. A fourth dose is given at 15 months along with MMR and TOPV. Although the regulations require four doses of DTP, the following exceptions apply: (1) a child who received a fourth dose~~

prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td(Adult) at or after age seven may meet this regulation with only three doses of Td(Adult).

4 doses of TOPV (or 4 doses of IPV); of which the first dose should be given at 6 weeks of age and the second dose given 4-8 weeks after the preceding dose. A third dose is given at 15 months along with MMR and DTP. Although the regulation requires four doses of TOPV (or 4 doses of IPV); if the third primary dose of TOPV or IPV is administered on or after the fourth birthday, a fourth dose is not required.

2 doses of Measles vaccine. The first dose should be given at 15 months of age or older. The second dose should be administered between four and six years of age. MMR can be provided to meet this requirement.

1 dose of Mumps and Rubella Vaccine given after the age of 15 months. MMR can be provided to meet this requirement.

Until September 1, 1991, the above requirements shall apply except that only 1 dose of measles vaccine given after the age of 15 months shall be required.

~~[7.1.3][6.1.3]~~ Acceptable documentation of the receipt of immunization vaccination as required by Sections ~~[7.1.1-7.1.2][6.1.1-6.1.2]~~ shall include either only a medical record signed by a physician, or a valid immunization record issued by the State of Delaware or another State, which specifies the vaccine given and the date of administration.

Immunization requirements for children attending public school can be found in Title 14, Section 131 of the Delaware code.

~~[7.1.4][6.1.4]~~ Immunization requirements pursuant to sections ~~[7.1.1-7.1.2][6.1.1-6.1.2]~~ shall be waived for:

(a) children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental-harmful to that child; and,

(b) children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

~~[7.1.5][6.1.5]~~ Child care facilities and private schools (grades K-12) shall maintain on file an immunization record for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

~~[7.1.6][6.1.6]~~ Parents whose children present immunization records which show that immunizations are lacking will be allowed 14 days (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. In which to obtain the required doses of vaccine for their children. In instances where more than 14 days will be necessary to complete the age-appropriate immunization schedule, an extension those days, upon certification by a physician, may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

~~[7.1.7][6.1.7]~~ When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule. ~~licensed physician, nurse practitioner or public health official that the child has received at least one (1) dose of DTP\_ DT (or Td vaccine), one dose of TOPV (or IPV), one dose of Measles, Mumps, and Rubella vaccines, along with Hib Conjugate vaccine, if required by the child's age.~~

~~[7.1.8][6.1.8]~~ It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to document required immunizations pursuant to this section 7.1.1-7.1.3 and 7.1.8-7.1.9.

~~[7.1.9][6.1.9]~~ Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in ~~[section 7.1.10]~~ [sections 6.1.1. and 6.1.2], any child not immunized against that disease shall be excluded from the premises, until the ~~Local Health Unit Administrator or his designated representative~~ Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the ~~Local Health Unit Administrator~~ Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

~~[7.1.10][6.1.10]~~ All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technician technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment starting September 1, 1991 by the following criteria:

1. Measles immunity:
  - (a) persons born ~~prior to~~ before January 1, 1957;
  - or
  - (b) physician documented history of measles disease; or
  - (c) serological confirmation of measles immunity;
  - or
  - (d) a documented receipt from a physician or health facility that two doses of measles vaccine were

administered after 12 months of age. ~~with at least one immunization after 15 months of age.~~

2. Rubella immunity:

(a) persons born ~~prior to~~ before January 1, 1957; ~~except women who could become pregnant~~; or

(b) laboratory evidence of antibodies to rubella virus; or

(c) a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.

3. Mumps immunity:

(a) persons born ~~prior to~~ before January 1, 1957; or

(b) physician diagnosed history of mumps disease; or

(c) laboratory evidence of immunity; or

(d) a documented receipt from a physician or health facility that mumps vaccine was administered on or after 12 months of age.

~~[7.1.11][6.1.11]~~ [6.1.11] Immunization requirements pursuant to section ~~[7.1.10][6.1.10]~~ shall be waived for:

(a) A student whose licensed physician certifies that such immunization may be detrimental to the student's health;

(b) A student who presents a notarized document that immunization is against their religious beliefs.

~~A student who presents a notarized document that immunization is against their religious beliefs;~~

(b) ~~A licensed physician who certifies that such immunization may be detrimental to the student's health.~~

~~[7.1.12][6.1.12]~~ [6.1.12] The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section ~~[7.1.10][6.1.10]~~ through ~~[student]~~ notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

~~[7.1.13][6.1.13]~~ [6.1.13] Students who cannot show evidence of immunity to measles pursuant to 7.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. However, measles vaccine shall not be given closer than ~~[30][28]~~ days apart. Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that ~~required~~ measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication.

~~7.1.12.4~~ The term post-secondary institution means and includes states universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

~~[7.1.14][6.1.14]~~ [6.1.14] The Division Director may maintain a registry of the immunization status of persons vaccinated against any vaccine preventable diseases (hereafter called an "immunization registry").

~~[7.1.14.1][6.1.14.1]~~ [6.1.14.1] Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

~~[7.1.14.2][6.1.14.2]~~ [6.1.14.2] The Division Director or designee may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

~~[b.1(a)]~~ [a] The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

~~[c.1(b)]~~ [b] Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

~~[d.1(c)]~~ [c] Health records staff of school districts and child care facilities.

~~[e.1(d)]~~ [d] Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

~~[f.1(e)]~~ [e] Health insurers, however only when the person immunized is a client of the health insurer.

~~[g.1(f)]~~ [f] Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

~~[7.1.14.3][6.1.14.3]~~ [6.1.14.3] If any person authorized in subsection ~~[7.1.14.2][6.1.14.2]~~ discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

~~[7.2][6.2]~~ [6.2] Ophthalmia Neonatorum  
See 16 Del. C. §803 and the ~~State Board of Health Department of Health and Social Services~~ regulations promulgated thereunder entitled "Regulations Governing Treatment of the Eyes of Newborns".

~~[7.3][6.3]~~ [6.3] Sexually Transmitted Diseases (STDs)

~~[7.3.1][6.3.1]~~ [6.3.1] ~~[The following diseases]~~ [Appendix I lists STDs regarded to] cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concerns such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to Title 16 Del. Code, Chapter 7. For the purposes

of this section, a suspect is any person (a) having positive or clinical findings of a STD; or (b) in whom epidemiologic evidence indicates an STD may exist, or is identified as a sexual contact of an STD case, and is provided treatment for the STD on that basis.

**[6.3.1.1 Class A: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported individually.**

**Acquired Immune Deficiency Syndrome (AIDS), (only if satisfying the case definitionn of the federal Centers for Disease Control)**

**Chancroid**

**Chlamydia trachomatis infections**

**Chlamydia trachomatis infections of**

**newborns**

**Neisseria gonorrhoea infections**

**(gonorrhoea and related conditions)**

**Granuloma inguinale**

**Hepatitis B**

**Herpes (congenital only)**

**Lymphogranuloma venereum**

**Pelvic Inflammatory Disease (only gonococcal and/or chlamydial)**

**Syphilis**

**6.3.1.2 Class B: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported by number only in demographic categories (for example, age and sex) or methods prescribed and furnished by the Division of Public Health, and from health care professionals or health facilities specified by the Section**

**Herpes (genital)**

**Human Immunodeficiency virus (HIV)\***

**Human papillomavirus (genital warts)**

\*Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.

**6.3.1.3 Class C: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported immediately by telephone or other rapid means of communication.**

**Congenital syphilis]**

~~[7.3.2]~~[6.3.2]Reporting of STDs

~~[7.3.2.1]~~[6.3.2.1]A physician or any other health care professional who diagnoses, suspects or treats a [Class A or Class C] ~~[reportable]~~ STD and every administrator of a health facility or state, county, or city prison in which there is a case of a [Class A or Class C] reportable STD shall report such case to the Division of Public Health [specifying] ~~[Unless reportable in number only as specified in Appendix I, reports of Class A and Class C provided under this rule shall specify]~~ the infected person's name, address, age date of birth, gender and race as well as the date of onset, name and stage of

disease, type and amount of treatment given and the name and address of the submitting health professional. **[Reports of Class A diseases shall be placed into the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of diagnosis, suspicion or treatment. Reports of Class C disease shall be telephoned within one working day of diagnosis, suspicion or treatment.]**

~~[7.3.2.2]~~[6.3.2.2]Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a [Class A or Class C] reportable STD shall notify the Division of Public Health. ~~[Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify]~~ [Reports of Class A diseases shall be placed in the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of identification of evidence suggestive of a STD. Reports shall include] the name, ~~age~~ date of birth, [race, gender] and address of the persons from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

~~[7.3.2.3]~~ 6.3.2.3]All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report Human Immunodeficiency Virus (HIV) [as a Class A STD] ~~[consistent with 7.3.2.2]~~ Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.

~~[7.3.2.4]~~Reports required by this Section for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.

~~7.3.2.5~~Reports of HIV infection shall be reportable by mail only in special double envelopes which will be provided by the Division of Public Health or by another method approved by the Division of Public Health, which assures the confidentiality of the information reported.]

~~[7.3.2.6]~~[6.3.2.4]All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, and §711 and §1203. From information received

from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

~~[7.3.2.7]~~**[6.3.2.5]**Any laboratory that examines specimens for the purpose of finding evidence of an STD shall permit the Division of Public Health to examine the records of said laboratory in order to evaluate compliance with this section.

~~[7.3.3]~~**[6.3.3]**~~[Reporting the Identity of Sexual or Needle Sharing Partners of STD Infected Patients]~~

**[Privilege to Disclose the Identity of HIV Infected Patients and Their Partners]**

~~[7.3.3.1]~~**[6.3.3.1]**Any physician, or any other licensed health care personnel acting on the orders of a physician, (hereafter referred to as provider), diagnosing or caring for an [HIV] ~~{STD}~~ infected patient ~~may shall~~ disclose the identity of **[the patient or]** the patient's sexual or needle-sharing partner(s) to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

a. The patient's condition satisfies the Centers for Disease Control definition of AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;

~~a. The patient is reasonably suspected of being infected with an STD and;~~

b. The provider knows of an identifiable partner at risk of infection; and

~~b. The provider does not know that the partner has been adequately informed of the risk, been offered testing, or advised of the risk management practices appropriate to the disease.]~~

c. The provider believes there is a significant risk of harm to the partner; and

d. The provider believes that the partner does not suspect that he or she is at risk; and

e. Reasonable efforts have been made to counsel the patient pursuant to 16 Del. C. Section 1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner; and

f. The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a

preference as to whether the partner be notified by the provider, the patient, or the Division.]

~~[7.3.3.2]~~**[6.3.3.2]**Any provider diagnosing or caring for an HIV infected patient may also disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division so that the partner may be notified of his or her risk of infection, when:

a. The patient requests the provider to make such notification for the purposes of obtaining assistance in the notification of a partner; or

b. The patient does not pose a threat to an identifiable partner but, in the professional judgment of the **[provider based upon stated intended acts, the patient may be dangerous to the general population. In this instance the conditions specified in Sections 6.3.3.1(a), 6.3.3.1(e) and 6.3.3.1(f) shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.**

**6.3.3.3 Procedures for disclosing information pursuant to this section shall be specified by the Division. Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.**

**6.3.3.4 The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.**

**6.3.3.5 Nothing in this section shall constitute a duty upon the provider to disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division for the purpose of notifying a partner of the risk of HIV infection. A cause of action shall not arise under this section for the failure to make such disclosure.]**

~~[7.4]~~**[6.4]**Tuberculosis

Any persons suspected of having infectious tuberculosis shall have a tuberculin skin test, an X-ray examination or laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Local Health Unit Administrator, the Section Chief or either of their designated representatives to determine whether said patient represents an infectious case of tuberculosis.

~~[7.4.1]~~**[6.4.1]**Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

The Local Health Unit Administrator, the Section Chief or either of their designated representatives shall determine

the names of household and other contacts who may be infected with tuberculosis and shall encourage them to be examined for the presence of tuberculosis infection.

~~7-4.2~~~~(6.4.2)~~ Reporting Tuberculosis

~~7-4.2.1~~~~(6.4.2.1)~~ Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and others who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

~~7-4.2.2~~~~(6.4.2.2)~~ Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from a human body yields microscopic, cultural, serological or other evidence suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

~~7-4.2.3~~~~(6.4.2.3)~~ Any provider who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

~~7-4.2.4~~~~(6.4.2.4)~~ Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

~~7-4.3~~~~(6.4.3)~~ Diagnostic Examinations

~~7-4.3.1~~~~(6.4.3.1)~~ Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

~~7-4.3.2~~~~(6.4.3.2)~~ The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause them to be examined for the presence of tuberculosis disease.

~~7-4.4~~~~(6.4.4)~~ Clinical Management

~~7-4.4.1~~~~(6.4.4.1)~~ In addition to fulfilling the reporting requirements of ~~7-4.1~~~~(6.4.1)~~, providers shall

manage persons with active TB disease by following one of three courses of action:

a. ~~they shall immediately refer the client to the Division of Public Health~~ for comprehensive medical and case management services; or

b. they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

c. they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses (b) or (c) above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health care provider shall assure that the requested information is communicated.

~~7-4.4.2~~~~(6.4.4.2)~~ Patients with infectious tuberculosis who are dangerous to public health may be required by the ~~State Board of Health~~ Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the ~~Division Director or designee~~ Local Health Unit Administrator, the Section Chief, or either of their designated representatives as to whether these or other facilities shall be used.

Section ~~8~~~~(7)~~.Preparation for Burial.

See 16 Del. C. Chapter 31 and ~~State Board of Health~~ Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

Section ~~9~~~~(8)~~.Disposal of Infectious Articles, Remains

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section ~~11~~~~(10)~~ ("Disposition of Amputated Parts of Human Bodies").

Section ~~10~~~~(9)~~.Diseased Animals.

~~10.1~~~~(9.1)~~ Importation and Sale

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected with a disease communicable from animals to man.

~~10.2~~~~(9.2)~~ Notification

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee Local Health Unit Administrator of the infection.

Section ~~11.1~~[10.1] Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.

~~11.1~~[10.1] Definitions

For the purposes of this section, the following definitions shall apply.

a. "Emergency medical care provider" - fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

b. "Receiving medical facility" - hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

c. "Universal precautions" - those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. Universal precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

~~11.2~~[10.2] Universal Precautions

~~11.2.1~~[10.2.1] Didactic Instruction

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

a. Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

b. Proper techniques of hand washing, including the theory supporting the effectiveness of hand washing, and guidelines for waterless hand cleansing in the field.

c. Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

d. The proper techniques of disinfection and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

e. Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

f. The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers.

g. First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

~~11.2.2~~[10.2.2] Practical or Laboratory Instruction

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

~~11.2.3~~[10.2.3] Approval of Curricula

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not regarded by the Division of Public Health to be in substantial compliance with ~~11.2.1 and 11.2.2~~[10.2.1 and 10.2.2.]

~~11.3~~[10.3] Communicable Diseases

~~11.3.1~~[10.3.1] Communicable Disease Defined

Exposure to patients infected with the following communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

Human Immunodeficiency Virus (HIV)

Hepatitis B Virus

Hepatitis C Virus

Meningococcal disease

Haemophilus influenzae

Measles

Tuberculosis

Uncommon or rare pathogens

~~11.3.2~~[10.3.2] Infection Defined

A patient shall be considered infected with a communicable disease when the following conditions are satisfied:

~~11.3.2.1~~[10.3.2.1] Blood-borne pathogens

a. HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

b. Hepatitis B - positive for hepatitis B surface antigen.

c. Hepatitis C - (1) IgM anti-HAV negative, and (2) IgM anti-HBc negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal; or anti-HcB positive.

~~11.3.2.2~~[10.3.2.2] Air-borne pathogens

a. Meningococcal disease -compatible clinical findings and laboratory confirmation through

isolation of *Neisseria meningitidis* from a normally sterile site.

b. *Haemophilus influenzae* -compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of *Haemophilus influenzae* from a normally sterile site or from the epiglottitis.

c. Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

d. Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

~~11.3.2.3~~**[10.3.2.3]** Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

~~11.3.3~~**[10.3.3]** Exposure Defined

~~11.3.3.1~~**[10.3.3.1]** Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in 11.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

~~11.3.3.2~~**[10.3.3.2]** Air-borne pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne pathogen as defined in 11.3.2.2 shall be as follows:

a. Meningococcal disease and *haemophilus influenzae* - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

b. Measles - Sharing confined air space with an infected patient, regardless of contact time.

c. Tuberculosis- Sharing confined air space with an infected patient, regardless of contact time.

~~11.3.3.3~~**[10.3.3.3]** Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

~~11.3.4~~**[10.3.3.4]** Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in ~~11.3~~**[10.3]**.

~~11.4~~**[10.4]** Request for Notification

~~11.4.1~~**[10.4.1]** Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

a. receive requests for notification from emergency medical care providers;

b. collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

c. forward requests for notification to receiving medical facilities;

d. report to the emergency medical care provider findings provided by the receiving medical facility; and

e. assist the emergency medical care provider to take medically appropriate action if necessary.

~~11.4.2~~**[10.4.2]** Receiving medical facilities must register with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

~~11.4.3~~**[10.4.3]** If an emergency medical care provider desires to be notified under this regulation, the officer designated pursuant to 11.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

~~11.5~~**[10.5]** Notification of Exposure to Air-borne Pathogens

~~11.5.1~~**[10.5.1]** Notwithstanding any requirement of ~~11.4.3~~**[10.4.3]**, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne communicable disease pursuant to ~~11.3.2.2 and 11.3.3.2~~ **[10.3.2.2 and 10.3.3.2]**. Such notification shall occur as soon as possible but not more than 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

~~11.5.2~~**[10.5.2]** To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-borne communicable disease to determine if care was provided by an emergency medical care provider. If medical records do not so indicate, the receiving medical facility shall assume that no notification is required.

~~11.6~~**[10.6]** Notification of Exposure when Requested

~~11.6.1~~**[10.6.1]** When a request for notification has been made pursuant to ~~11.4.3~~**[10.4.3]**, the receiving

medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to ~~11.4.1~~[10.4.1] as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. Whether or not the emergency medical care provider was exposed;
- c. If the emergency medical care provider was exposed, the communicable disease involved.

~~11.6.2~~[10.6.2] If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section ~~11.4.1~~[10.4.1] as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. That there is insufficient information to determine if an exposure has occurred;

~~11.6.3~~[10.6.3] The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 11.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

#### ~~11.7~~[10.7] Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to ~~11.4.1~~[10.4.1]. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

#### ~~11.8~~[10.8] Transfer of Patients

If, within the 30-day limitation defined in ~~11.5.1 and 11.6.1~~[10.5.1 and 10.6.1] a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by

emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to ~~11.4.1~~[10.4.1] if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

#### ~~11.9~~[10.9] Death of Patient

If, within the 30-day limitation defined in ~~11.5.1 and 11.6.1~~[10.5.1 and 10.6.1], a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical facility must provide the medical examiner with all requests for notification made by emergency medical care providers for that patient. The medical examiner must make notification to the designated officer if the medical examiner determines that the patient is infected with a communicable disease, and shall otherwise comply with these regulations.

#### ~~11.10~~[10.10] Testing of Patients for Infection

Nothing in this regulation shall be construed to authorize or require a medical test of an emergency medical care provider or patient for any infectious disease.

#### ~~11.11~~[10.11] Confidentiality

All requests and notifications made pursuant to these regulations shall be used solely for the purposes of complying with these regulations and are otherwise confidential.

### Section ~~12~~[11] Enforcement

#### ~~12.1~~[11.1] Authorization

The Department of Health and Social Services or the Director of the Division of Public Health or their designated representatives are authorized to enforce these regulations to accomplish the following:

~~12.1.1~~[11.1.1] To insure compliance of persons who refuse to submit themselves or others for whom they are responsible, including their animals, to necessary inspection, examination, treatment, sacrifice of the animal, or quarantine.

~~12.1.2~~[11.1.2] To insure coordination of actions of individuals, local authorities, or state authorities in the control of communicable disease.

~~12.1.3~~[11.1.3] To insure the reporting of notifiable diseases or other disease conditions as required in these Rules.

#### ~~12.2~~[11.2] Penalties

Except as otherwise provided by the Delaware Code or this regulation, failure to comply with the requirements of this regulation will be subject to prosecution pursuant to 16 Del. C., §107. The Department of Health and Social Services may seek to enjoin violations of this regulation.

### Appendix I Notifiable Diseases

Acquired Immune Deficiency Syndrome (AIDS) (S)  
 Anthrax (T)  
~~Amebiasis~~  
 Botulism (T)  
 Brucellosis  
 Campylobacteriosis  
 Chancroid (S)  
 Chlamydia trachomatis infection (S)  
 Cholera ~~(N)~~ (T)  
 Cryptosporidiosis  
 Cyclosporidiosis/Poliomyelitis (T)  
 Diphtheria (T)  
 E. Coli 0157:H7 infection (T)  
 Encephalitis  
 Ehrlichiosis  
 Foodborne Disease Outbreaks (T)  
 Giardiasis  
 Gonococcal Infections (S)  
 Granuloma Inguinale (S)  
 Hansen's Disease (Leprosy)  
 Hantavirus infection (T)  
Hemolytic uremic syndrome (HUS)  
 Hepatitis A (T)  
 Hepatitis B (S)  
 Hepatitis C & unspecified  
 Herpes (congenital) ~~(T)~~ (S)  
 Herpes (genital) (N) ~~[(S)]~~  
 Histoplasmosis  
 Human Immunodeficiency Virus (HIV) ~~(N)~~ ~~[(S)]~~  
 Human papillomavirus (genital warts) (N) ~~[(S)]~~  
 Influenza (N)  
 Lead Poisoning  
 Legionnaires Disease  
 Leptospirosis  
 Lyme Disease  
 Lymphogranuloma  
 Venereum (S)  
 Malaria  
 measles (T)  
~~Meningitis (aseptic)~~  
~~Meningitis (bacterial)~~  
Meningitis (all types other than meningococcal)  
Meningococcal ~~Meningitis (T)~~ [Infections (all types) (T)]  
~~[Meningococcal Disease (other)]~~  
 Mumps (T)  
 Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)  
 Pertussis (T)  
 Plague (T)  
 Psittacosis  
 Rabies (man, animal) (T)  
 Reye Syndrome  
 Rocky Mountain Spotted Fever  
 Rubella (T)

Rubella (congenital) (T)  
 Salmonellosis  
 Shigellosis  
Streptococcal disease (invasive group A)  
Streptococcal toxic shock syndrome (STSS)  
~~[Streptococcus pneumoniae (drug-resistant, invasive disease)]~~  
 Syphilis (S)  
 Syphilis (congenital) (T) (S)  
 Tetanus  
 Toxic Shock Syndrome  
 Trichinosis  
 Tuberculosis ~~[(T)]~~  
 Tularemia  
 Typhoid Fever (T)  
 Vaccine Adverse Reactions  
Varicella (N)  
Waterborne Disease Outbreaks (T)  
 Yellow Fever (T)

(T) report by rapid means.  
(N) report in number only when so requested  
For all diseases not marked by (T) or (N):  
(S) – sexually transmitted disease, report required in 1 day  
Others – report required in 2 days

Appendix II

Drug Resistant Organisms Required To Be Reported

~~[Enterococci resistant to Vancomycin-  
 Pseudomonas aeruginosa resistant to Amikacin,  
 Gentamicin and Tobramycin-  
 Staphylococcus aureus resistant to methicillin]~~  
Staphylococcus aureus intermediate or resistance to  
 Vancomycin (MIC >8ug/ml)  
~~[Streptococcus pneumoniae (drug-resistant, invasive  
 disease)]~~

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** 505)

**Medicaid / Medical Assistance Program  
1115 Demonstration Waiver**

IN THE MATTER OF:

REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to Delaware's 1115 Demonstration Waiver. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2000, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective March 10, 2000.

February 7, 2000  
Date of Signature

Gregg C. Sylvester, M.D.  
Secretary

Under the authority of the Balanced Budget Act of 1997, the State of Delaware, Department of Health and Social Services, Medicaid Program, is requesting an extension of its 1115 Demonstration Waiver to provide managed care services to the majority of Medicaid eligible individuals, known as the Diamond State Health Plan.

Under the current waiver authority, the Diamond State Health Plan is authorized until March, 2001. The Balanced Budget Act of 1997 waiver authority will allow the program to continue, without re-authorization, until March 1, 2004. The State intends no changes to the Diamond State Health Plan during the extension period.

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 **Del.C.** 512)

**REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM**

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to its Non-Emergency Transportation Provider Specific Manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2000, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

One written comment was received. The comment was considered and a letter sent responding to the concerns raised. Copies of the comment and response are available upon request.

**FINDINGS OF FACT:**

Minor grammatical changes were made as written below. It was found that no substantive changes were necessary or appropriate.

The Department finds that the proposed changes as set forth in the January 2000 Register of Regulations should be adopted as amended.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective March 10, 2000.

February 17, 2000  
Date of Signature  
Gregg C. Sylvester, M.D., Secretary

**NON-EMERGENCY MEDICAL TRANSPORTATION  
PROVIDER POLICY****I. GENERAL INFORMATION**

In accordance with Federal Regulation, 42 CFR 431.53, the Delaware Medical Assistance Program (DMAP) will assure transportation for eligible Medicaid recipients who need to secure necessary medical care and who have no other means of transportation. The DMAP is designed to assist eligible Medicaid recipients in obtaining medical care within the guidelines specified in this policy.

The DMAP defines non-emergency medical transportation services as transportation to or from medical care for the purpose of receiving treatment and/or medical evaluation. The DMAP will determine the transportation provider to be in compliance with this policy as long as the transport is to or from a medical service.

The DMAP assigns a unique provider number ending with "15" to each non-emergency transportation provider enrolled with the DMAP.

**Scope of Service**

The DMAP covers transportation by way of automobile, van, and taxi service for eligible Medicaid clients from the point of pickup to the medical provider location or from the medical provider location to the point of delivery. The service will include all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and any and all other components necessary to provide a transportation service for the needs of the DMAP client.

Automobile

The DMAP covers transportation by way of an automobile when the automobile is a passenger vehicle that carries no more than five riders.

Van

Transportation by way of a van is covered by the DMAP if the van is a vehicle that can accommodate more than five occupants.

Taxi

The DMAP will cover transportation by way of a taxi if the vehicle is chartered by the Department of Transportation (DOT) and if the taxi can provide short-response service.

**[Escort]**

~~The DMAP covers~~ reimburses the transportation for an individual to escort responsible for the care of a Medicaid client to medical services who is unable or too young to travel alone. ~~Transportation shall be provided to the individual to receive medical instructions in the care of the Medicaid client or to visit the Medicaid client when they are hospitalized. The transport will be considered a service to~~

~~the Medicaid client and therefore must be billed using the Medicaid ID# of the hospitalized client. The transportation provider must fully document these transports. The documentation must include the name(s) of those being transported and the reason they are being transported. The provider must bill these transports using the appropriate HCPCS procedure code found in Appendix A. In cases when there are two persons responsible for the care of a Medicaid client and both are transported, the provider must use the appropriate HCPCS procedure code with the modifier Y1. Transportation services will also be reimbursed for up to two individuals responsible for the care of a Medicaid client to receive medical instructions in the care of the client or to visit the Medicaid client when they are hospitalized. Because transportation of the responsible individual is considered a service to the Medicaid client, it must be billed using the Medicaid ID# of the recipient of the medical service. Documentation in the billing records must include the names of the escorts or care givers being transported and the reason for the transportation. Provider will use the appropriate HCPCS procedure codes found in Appendix A.~~

**Definitions**

Non-emergency medical transportation services are defined as transportation to or from any medical service for the purpose of receiving treatment and/or medical evaluation.

The following definitions pertain to non-emergency medical transportation only.

**Escort** is an interested individual that must accompany a recipient due to recipient's physical/mental/developmental capacity. Examples of an escort include, but are not limited to, a parent, guardian, or an individual who assumes parental like responsibility, or a child of a geriatric parent. The escort's presence is required to ensure that the recipient receives proper medical service/treatment. ~~Refer to Appendix A, modifier Y1 for billing information.~~

**Rideshare:** A rideshare participant is a client who is able to share a ride with another client because their route and time coincide.

**Limitations and Exclusions****Exclusions**

- The DMAP will not reimburse for services in which prior approval is required but was not obtained.
- The DMAP will not be reimburse for services that are not medically necessary or which are not provided in compliance with the provisions of the Program.
- The DMAP will not reimburse for taxi service that

is to/from on-going or ~~reoccurring~~ recurring] services such as, but not limited to: Methadone Clinics, Community Mental Health, physical, occupational, and speech therapy.

## II. PROVIDER PARTICIPATION RESPONSIBILITIES

As a provider of non-emergency transportation services, it is the responsibility of the provider to abide by the following policies and procedures of the DMAP. This includes, but is not limited to:

- The provider is responsible for maintaining complete and accurate records of operational and administrative costs, and records that validate provider billing and utilization of services. This material will be made available to authorized representatives of the DMAP for review and audit.
- The provider is responsible for arranging and providing transportation services for DMAP recipients as follows:

1. At the time of request for transportation the provider shall complete a Transportation Scheduling Form (see Appendix B) to accurately reflect the reason for the transport and to detail all information received from the recipient regarding the transport. The completion of the Transportation Scheduling Form will assist the transportation provider with a profile of the recipient and will help in determining the recipient's needs (if any);

2. Verify individual's DMAP eligibility. The provider may contact ~~Confirm~~ the Automated Voice Response (AVR) service to verify an individual's eligibility;

## VI. REIMBURSEMENT

### Vehicles Other Than Taxi

Non-emergency medical transportation providers, ~~except taxi providers,~~ are reimbursed ~~[a] prospective rate per mile based on reported historic costs (cost reports).~~ A regional base rate plus a universal rate per mile. Rates will be reviewed annually. Regions are defined as the three counties in the State of Delaware.

Escorts, when needed, and rideshare participants will each be reimbursed the regional base rate. Mileage will be reimbursed only for the client located the most distance from the service provider.

The DMAP will pay a differential rate added to the base rate for service provided between 6 PM and 6 AM weekdays and 24 hours on the weekends and holidays.

The DMAP will pay a differential rate for transportation service provided in a vehicle equipped with a wheelchair lift and occupied by a client that is non-ambulatory.

Reimbursement is full and represents ~~includes~~ all

vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and all operational and administrative costs ~~components~~ necessary to provide medical transportation services.

### Taxi Providers

Non-emergency medical transportation by taxi is reimbursed at the metered rate for a trip with one client in the cab.

Taxi providers may be reimbursed for rideshare participants in addition to their usual and customary fee.

Reimbursement is full and represents all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants and all operational and administrative cost necessary to provide medical transportation services.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. 6010)

**Secretary's Order No. 2000-A-0008**

Date of Issuance: February 11, 2000

Effective Date of the Amendments: March 11, 2000

### I. Background

On Tuesday, January 4, 2000, at approximately 6:15 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of the public hearing was to receive public comment on a proposed final draft of the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub> and CO*. Two members of the public attended the public hearing but made no comments and asked no questions for the record concerning the proposal. After the hearing, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated February 10, 2000, and that memorandum is expressly incorporated herein by reference.

### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated February 10, 2000, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

**III. Order**

In view of the above, I hereby order that the final draft *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub> and CO*, as presented at the public hearing, be adopted as a Revision to Delaware's SIP in the manner and form provided for by law.

**IV. Reasons**

Revising Delaware's SIP will further the policies and purposes of 7 Del. C. Chapter 60, because after adoption of a 1996 Periodic Emissions Inventory, the Department may submit it to the United States Environmental Protection Agency in order to fulfil its commitments under the Clean Air Act. Indeed, these commitments are intended to lead to reductions of emissions of ozone precursor chemicals in order to reduce air pollutants to ultimately meet the 1-hour National Ambient Air Quality Standard for ground-level ozone, which would lead to improved air quality and be beneficial to the health and welfare of the people of the state of Delaware.

Nicholas A. DiPasquale  
Secretary

**1996 Periodic Ozone  
State Implementation Plan  
EMISSIONS INVENTORY FOR VOC, NO<sub>x</sub>, and CO  
for the State of Delaware  
Final  
March 11, 2000**

**ACKNOWLEDGEMENT**

The agency directly responsible for preparing and submitting the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub>, and CO* is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section.

The overall responsibility for inventory development falls within the Planning and Community Protection Branch of DNREC's Air Quality Management Section, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of DNREC's Emissions Research, Planning and Attainment Group, was the project supervisor/coordinator of the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub>, and CO*.

The following personnel in DNREC's Air Quality Management Section were responsible for developing their respective portion of this inventory:

Margaret A. Jenkins Pomatto, Environmental Scientist –

Technical Editor and Graphics Design, and Off-Road Mobile Source Coordinator

Mohammed A. Mazeed, Environmental Engineer – Senior QA/QC Coordinator

John L. Outten, Environmental Scientist – Point Source Coordinator

Kevin D. Yingling, Environmental Scientist – Point Source QA Analyst

Marian A. Hitch, Senior Environmental Compliance Specialist – Point Source QA Analyst, and Stationary Area and Mobile Sources Reviewer

Mark H. Glaze, Resource Planner – On-Road Mobile Source Coordinator, and On-Road and Off-Road Mobile Sources QA Analyst

John L. Sipple, Environmental Scientist – Stationary Area and Natural Sources Coordinator, and QA Analyst

Mark D. Eastburn, Environmental Scientist – Stationary Area and Natural Sources Coordinator, and QA Analyst

The Delaware Department of Transportation (DelDOT) was responsible for performing the work necessary to create the on-road mobile source portion of this inventory. Mike DuRoss, Transportation Planning Supervisor in the Division of Planning, Transportation Policy and Research Section at DelDOT, acted as the project leader responsible for development and documentation of the on-road mobile source inventory. Various other State agencies, including the Department of Agriculture, the Department of Labor, and the Department of Public Safety, provided activity level data for use in estimating emissions for this inventory.

**SECTION 1  
BACKGROUND AND EMISSIONS SUMMARY**

**BACKGROUND**

This document presents the *1996 Periodic Ozone State Implementation Plan (SIP) Emissions Inventory for VOC, NO<sub>x</sub>, and CO* (hereafter referred to as *1996 Periodic Emissions Inventory*), as required by the Clean Air Act Amendments (CAAA) of 1990. The CAAA of 1990 as does the original Clean Air Act of 1970, contains provisions for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS) for criteria pollutants.

Section 182(a)(1) of the CAAA requires states with nonattainment areas to submit a comprehensive, accurate, current inventory of actual emissions of ozone precursors from all sources within two years of enactment. This initial inventory covers the 1990 calendar year, and is widely known as the 1990 Base Year Ozone SIP Inventory. Section 182(a)(3) of the CAAA requires states with nonattainment areas to submit periodic inventories starting with 1993 and every three years thereafter until the area is redesignated to attainment. In meeting the requirements of Section 182(a)(3) of CAAA, the *1990 Base Year Ozone SIP*

*Emissions Inventory for VOC, CO, and NO<sub>x</sub>* was submitted to and approved by U.S. Environmental Protection Agency (EPA), Region III on May 27, 1994, and March 25, 1996, respectively. The *1993 Periodic Ozone SIP Emissions Inventory for VOC, CO, and NO<sub>x</sub>* was submitted to U.S. EPA, Region III on January 30, 1998.

All of Delaware's three counties are in nonattainment of the 1-hour NAAQS for ozone. As shown in Figure 1-1, New Castle and Kent Counties are part of the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (Philadelphia CMSA), which is classified as a "severe" nonattainment area with a design value of 0.187 parts per million (ppm). Sussex County is classified as "marginal" with a design value of 0.130 ppm. The nonattainment areas are defined by the publication *Designation of Areas for Air Quality Planning Purposes*, 40 CFR Part 81, Final Rule, U.S. EPA, Office of Air and Radiation, Washington, D.C., November 6, 1991. The total geographic area covered by this inventory includes the Kent, New Castle, and Sussex Counties nonattainment areas as shown in Figure 1-2.

This map was adapted from *Major CO, NO<sub>2</sub> and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA450/4-92-005a, U.S. EPA, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, N.C., February 1992.

For the purposes of creating a consistent, statewide *1996 Periodic Emissions Inventory*, the entire state of Delaware, including Sussex County, was inventoried according to U.S. EPA guidelines for severe areas. Inventorying Sussex County as if it were a severe area had no effect on the method used to prepare this inventory, nor will it affect future ozone attainment planning activities. The only effect of this decision to inventory Sussex County as if it were a severe area is to improve the accuracy of the point source inventory by including sources in Sussex County that emit between ten and one hundred tons per year (TPY) of VOCs. Otherwise, point sources in Sussex County would be inventoried only if VOC emissions are greater than or equal to one hundred TPY.

Demographic data for the state of Delaware is used to estimate air emissions from many of the sources in this inventory and includes population, employment, housing, and other statistics. A summary of the 1996 demographic information for Delaware by county is presented in Table 1-1. Subsequent sections of this report describe how this data is used to estimate emissions for particular sources.

The remainder of this section presents a summary of Delaware's VOC, NO<sub>x</sub>, and CO emissions totals for 1996.

## DOCUMENT ORGANIZATION

This document presents detailed discussions of the

emission estimation methods, data sources, and quality assurance procedures used to compile this inventory. Each source category is discussed in its own section as follows:

- Section 2 - Point Sources
- Section 3 - Stationary Area Sources
- Section 4 - Off-Road Mobile Sources
- Section 5 - On-Road Mobile Sources
- Section 6 - Natural Sources
- Section 7 - DNREC Quality Assurance Implementation

Reference documentation that is pertinent to the discussion in a particular section of this document is included in an attachment at the end of that particular section. For example, computer printouts and excerpts from emissions reports relevant to the Section 2 point source discussion are labeled in Attachment 2 and are found at the end of Section 2. Reference documents less directly related to emissions estimations in this inventory, or too large to be included in the attachments, are placed in appendices at the end of this document.

## EMISSIONS SUMMARY

The VOC, NO<sub>x</sub>, and CO emissions in this *1996 Periodic Emissions Inventory* are estimated on both an annual (TPY) and a daily (TPD) basis. Annual emissions are estimated for calendar year 1996. Daily emissions are estimated for a typical peak ozone season day. The peak ozone season is defined as that contiguous three-month period of the year during which the highest number of ozone exceedances have occurred over the past three to four years. The peak ozone season for the *1996 Periodic Emissions Inventory* report is June through August. Peak ozone season daily emissions represent average emissions that occur on a typical weekday during the peak ozone season. All references to daily or seasonal emissions in this document refer to peak ozone season daily emissions.

In this inventory, VOC, NO<sub>x</sub>, and CO emission sources are categorized into point, stationary area, off-road mobile, on-road mobile, and natural sources. Peak ozone season daily and annual emissions are estimated for all of these categories.

Prior to compiling the final numbers in this summary, several adjustments were made to the estimated emissions values. First, in accordance with *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources*, EPA-450/4-91-016, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, May 1991, [hereafter referred to as *Procedures, Volume I (1991)*],

photochemically nonreactive VOC emissions were removed from the inventory. While most VOCs engage in photochemical reactions, some are considered nonreactive under atmospheric conditions. These compounds, as defined in Regulation No. 1 of the *Regulations Governing the Control of Air Pollution*, 40-09-81/02/01, Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, updated to February 1995, do not contribute to ozone formation, therefore are subtracted from the inventory. All references to "nonreactive VOCs" in this document mean **photochemically**, nonreactive VOCs.

Second, emissions from regulated sources were adjusted for rule effectiveness and/or rule penetration, where applicable. Rule effectiveness is an adjustment to the emissions estimates of regulated sources to account for the fact that all sources are not in compliance with applicable air regulations 100 percent of the time. The rule effectiveness adjustment compensates for underestimates of emissions caused by noncompliance with existing regulations, control equipment downtime, operating problems, and process upsets. Rule effectiveness adjustments were made according to the *Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories*, EPA-452/R-92-010, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, November 1992.

Rule penetration factors are used in conjunction with rule effectiveness to adjust regulated emissions estimates. Rule penetration is the portion of a source category that is affected by a regulation. If a regulation applies to only a certain percentage of sources within a source category, a rule penetration factor is applied to ensure that the rule effectiveness adjustment affects only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category. Adjustments for removal of nonreactive VOCs, rule effectiveness, and rule penetration are discussed in detail in appropriate sections of this document. All summary tables in this document list emissions values that have been adjusted as appropriate for removal of nonreactive VOCs, rule effectiveness, and rule penetration.

Differences in emission estimates between this inventory and previous inventories compiled by AQM may be due to a number of reasons, including but not limited to: changes to or addition of emission controls, changes in business or industrial activity, different methods of estimation, and the availability of more complete data.

The results of Delaware's 1996 *Periodic Emissions Inventory* are presented in both tabular and graphic form. Table 1-2 summarizes Delaware's 1996 annual emissions of VOC, NO<sub>x</sub>, and CO for each county and for the state.

Table 1-3 summarizes Delaware's 1996 peak ozone

season daily emissions of VOC, NO<sub>x</sub>, and CO for each county and for the state. The state's total peak ozone season daily emissions of VOC, NO<sub>x</sub>, and CO are depicted graphically in Figure 1-3. Using the information from Table 1-3, a distribution of the peak ozone season daily emissions by county was prepared as shown in Figure 1-4.

Table 1-4 summarizes Delaware's 1996 annual and peak ozone season daily emissions of VOC, NO<sub>x</sub>, and CO by source category. The distribution of peak ozone season daily emissions by source category is depicted graphically in Figure 1-5.

Table 1-5 presents a summary of Delaware's 1996 annual and peak ozone season daily VOC emissions by county and by source category. Tables 1-6 and 1-7 present similar information for NO<sub>x</sub> and CO, respectively. This information is presented graphically in Figures 1-6, 1-7, and 1-8, which show comparisons of source category emissions by county for VOC, NO<sub>x</sub>, and CO, respectively.

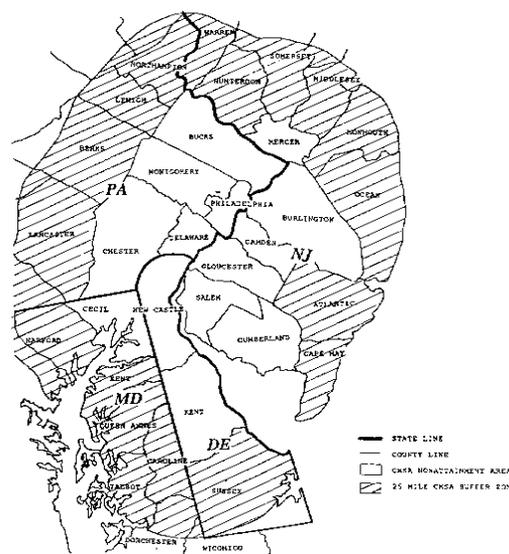


Figure 1-1. Philadelphia-Wilmington-Trenton CMSA Ozone Nonattainment Area<sup>1</sup>

<sup>1</sup>This map was adapted from *Adopt CO, NO<sub>x</sub> and VOC Sources in the 25-Mile Boundary Annual Ozone Nonattainment Area, Volume 1: Classified Ozone Nonattainment Area*, EPA/452/4-92/005a, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February 1992.

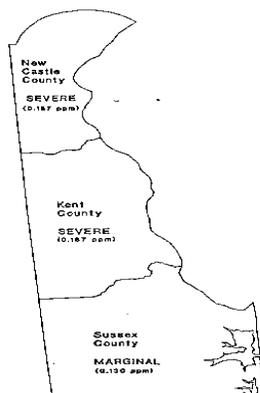


Figure 1-2. Inventory Area for Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub>, and CO.

1-4

Figure 1-2. Inventory Area for the Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub>, and CO.

**TABLE 1-1**  
**SUMMARY OF 1996 DEMOGRAPHIC INFORMATION**  
**FOR THE STATE OF DELAWARE**

Demographic Parameter	KENT COUNTY VALUE	NEW CASTLE COUNTY VALUE	SUSSEX COUNTY VALUE	STATE VALUE
Population <sup>a</sup>	122,906	471,702	130,201	724,809
Land Area (square miles) <sup>b</sup>	594	439	950	1,983
Number of Households <sup>c</sup>	46,920	179,676	49,680	276,276
Manufacturing Employment <sup>d</sup>	6,519	39,319	11,985	57,823
Construction Employment <sup>d</sup>	2,504	15,358	4,172	22,034
Retail Employment <sup>d</sup>	11,895	43,739	13,965	69,599
Commercial/Institutional Employment <sup>d</sup>	37,309	185,653	35,903	258,865
Gasoline RVP <sup>e</sup>	8.1	8.1	8.1	8.1

<sup>a</sup> State of Delaware, Delaware Economic Development

Office, Delaware Population Projections Consortium. Dover, Delaware. January 1997.

<sup>b</sup> Webster's New Geographic Dictionary, Miriam Webster Publishing Company, 1984.

<sup>c</sup> U.S. Department of Commerce.

<sup>d</sup> State of Delaware. Delaware Department of Labor.

<sup>e</sup> Developed per EPA guidance using the American Automobile Manufacturers Association International Fuel Survey for Philadelphia, PA--Summer 1996.

**TABLE 1-2**  
**STATE AND COUNTY ANNUAL VOC, NO<sub>x</sub>, AND CO**  
**EMISSIONS**

COUNTY	POLLUTANT EMISSIONS (TPY)		
	VOC	NO <sub>x</sub> <sup>a,b</sup>	CO <sup>a,c</sup>
Kent	11,678	8,218	26,343
New Castle	26,672	31,577	102,084
Sussex	20,596	19,044	36,219
STATE TOTAL	<b>58,946</b>	<b>58,839</b>	<b>164,646</b>

<sup>a</sup> Total annual NO<sub>x</sub> and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

<sup>b</sup> Total annual NO<sub>x</sub> emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

<sup>c</sup> Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

**TABLE 1-3**  
**STATE AND COUNTY PEAK OZONE SEASON**  
**DAILY VOC, NO<sub>x</sub>, AND CO EMISSIONS**

COUNTY	POLLUTANT EMISSIONS (TPD)		
	VOC	NO <sub>x</sub> <sup>a,c</sup>	CO <sup>a,c,d</sup>
Kent	84.517	27.478	71.729

New Castle	144.866	99.510	359.822
Sussex	156.110	63.033	115.077
<b>STATE TOTAL</b>	<b>385.493</b>	<b>190.021</b>	<b>546.628</b>

<sup>a</sup> Total annual NO<sub>x</sub> and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

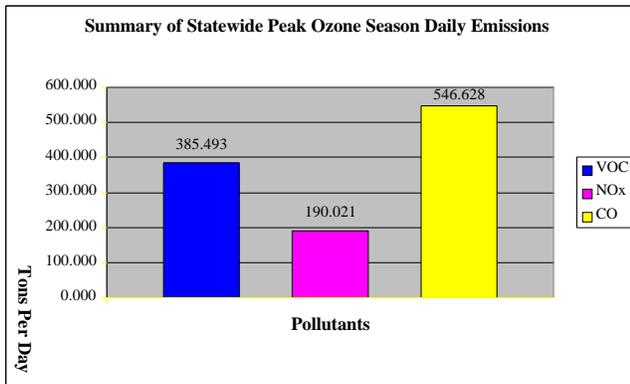
<sup>b</sup> Total annual NO<sub>x</sub> emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

<sup>c</sup> Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

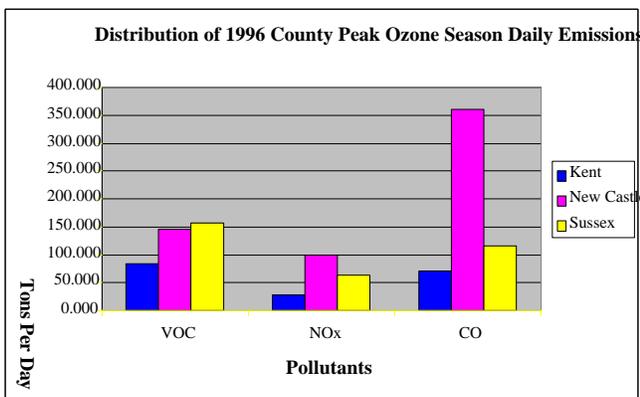
<sup>d</sup> Carbon dioxide emissions from natural sources are not generated by the *PC-BEIS2.0* model, therefore are not reported in this inventory.

**TABLE 1-4  
ANNUAL AND PEAK OZONE SEASON DAILY EMISSIONS BY SOURCE CATEGORY**

SOURCE CATEGORY	POLLUTANT EMISSIONS					
	VOC		NO <sub>x</sub>		CO	
	Annual (TPY)	Daily (TPY)	Annual (TPY)	Daily (TPD)	Annual (TPY)	Daily (TPD)
Point Sources	6,322	31.728	25,488	78.799	17,198 <sup>a</sup>	90.655
Stationary Area Sources	15,695 <sup>a</sup>	40.503	3,481 <sup>a</sup>	6.852	7,309	8.236
Off-road Mobile Sources	5,754	24.551	8,935	33.549	39,248	156.537
On-road Mobile Sources	11,014	46.770	19,142	60.670	100,891	291.200
Natural Sources	20,161	241.941	1,793	10.151	N/A <sup>b</sup>	N/A <sup>b</sup>
<b>STATE TOTAL</b>	<b>58,946</b>	<b>385.493</b>	<b>58,839</b>	<b>190.021</b>	<b>164,646</b>	<b>546.628</b>



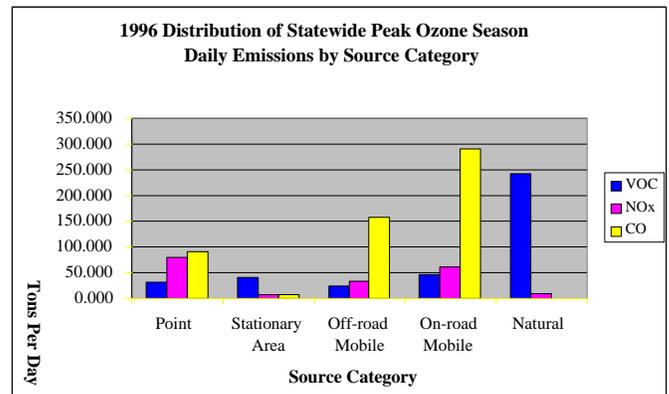
**Figure 1-3. Summary of Statewide Peak Ozone Season Daily Emissions**



**Figure 1-4. Distribution of Peak Ozone Season Daily Emissions by County**

<sup>a</sup> There are no methods for determining annual NO<sub>x</sub> or CO emissions for leaking underground storage tank, and vehicle refueling and spillage emissions sources within the stationary area source category.

<sup>b</sup> Not Applicable. Emissions of CO from biogenic sources are not generated by the *PC-BEIS2.0* model, therefore are not reported in this inventory.



**Figure 1-5. Distribution of Statewide Peak Ozone Season Daily Emissions by Source Category**

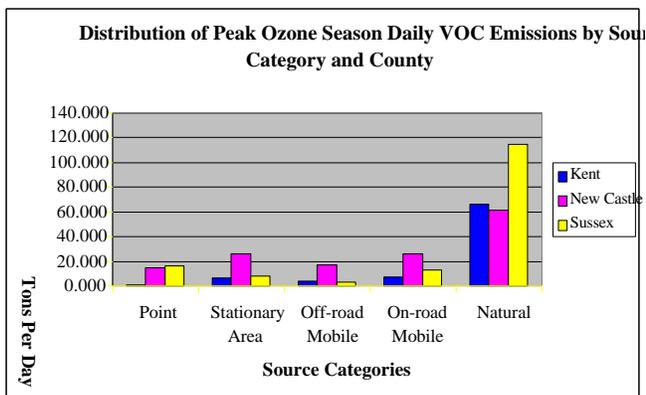


Figure 1-6. Distribution of Peak Ozone Season Daily VOC Emissions by Source Category and County

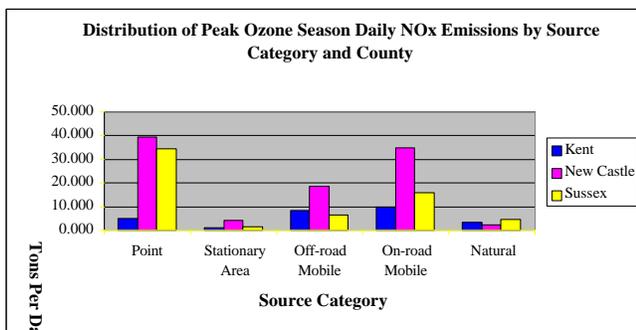


Figure 1-7. Distribution of Peak Ozone Season Daily NO<sub>x</sub> Emissions by Source Category and County

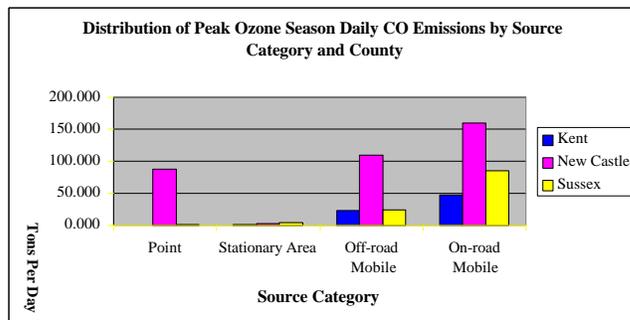


Figure 1-8. Distribution of Peak Ozone Season Daily CO Emissions by Source Category and County

TABLE 1-5  
SUMMARY OF VOC EMISSIONS BY COUNTY AND SOURCE CATEGORY

COUNTY	VOC Emissions											
	POINT SOURCES		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Natural Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)*	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	208	0.638	3,025	6.301	1,186	4.030	1,976	7.520	5,283	66.028	11,678	84.517
New Castle	3,837	14.340	8,334	25.905	3,728	17.046	6,080	26.090	4,693	61.485	26,672	144.866
Sussex	2,277	16.750	4,336	8.297	840	3.475	2,958	13.160	10,185	114.428	20,596	156.110
Total	6,322	31.728	15,695	40.503	5,754	24.551	11,014	46.770	20,161	241.941	58,946	385.493

**TABLE 1-6  
SUMMARY OF NO<sub>x</sub> EMISSIONS BY COUNTY AND  
SOURCE CATEGORY**

COUNTY	NO <sub>x</sub> Emissions											
	Point Sources		Stationary Area Sources		Off-Road Mobile		On-Road Mobile		Natural Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	1,176	4.925	540	0.992	2,298	8.384	3,606	9.900	598	3.277	8,218	27.478
New Castle	12,965	39.550	2,202	4.333	4,944	18.649	11,078	34.820	388	2.158	31,577	99.510
Sussex	11,347	34.324	739	1.527	1,693	6.516	4,458	15.950	807	4.716	19,044	63.033
Total	25,488	78.799	3,481	6.852	8,935	33.549	19,142	60.670	1,793	10.151	57,046	190.021

**TABLE 1-7  
SUMMARY OF CO EMISSIONS BY COUNTY AND  
SOURCE CATEGORY**

County	CO EMISSIONS <sup>a</sup>									
	Point Sources		Stationary Area Sources		Off-Road Mobile		On-Road Mobile Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	146	0.527	1,869	1.077	6,200	22.335	18,128	47.790	26,343	71.729
New Castle	16,504	88.427	1,854	2.738	26,773	109.867	56,953	158.790	102,084	359.822
Sussex	548	1.701	3,586	4.421	6,275	24.335	25,810	84.620	36,219	115.077
Total	<b>17,198</b>	<b>90.655</b>	<b>7,309</b>	<b>8.236</b>	<b>39,248</b>	<b>156.537</b>	<b>100,891</b>	<b>291.200</b>	<b>164,646</b>	<b>546.628</b>

<sup>a</sup> The PC-BEIS2.0 model does not generate CO emissions from natural sources. Therefore, the natural source category is not included in this table.

Date of Issuance: February 2, 2000

Effective Date of the SIP Revision: March 11, 2000

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. Section 6010)

**DELAWARE 1996 MILESTONE DEMONSTRATION FOR  
KENT AND NEW CASTLE COUNTIES: Demonstrating  
Adequate Progress Toward Attainment of the  
1-Hour National Ambient Air Quality Standard  
for Ground-Level Ozone**

Secretary's Order No. 2000-A-0006

I. Background

On Tuesday, January 4, 2000, at approximately 6:25 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of the public hearing was to receive public comment on Delaware's proposed State Implementation Plan revision to demonstrate Delaware's 1996 compliance with adequate progress in emission reductions toward attainment of the 1-hour ground-level ozone NAAQS. Two members of the public attended the public hearing but made no comments and asked no questions for the record concerning the proposal. After the hearing, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated February 2, 2000, and that memorandum is expressly incorporated herein by

reference.

## II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated February 2, 2000, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

## III. Order

In view of the above, I hereby order that the *DELAWARE 1996 MILESTONE DEMONSTRATION FOR KENT AND NEW CASTLE COUNTIES: Demonstrating Adequate Progress Toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone* as presented at the public hearing be adopted as a Revision to Delaware's SIP in the manner and form provided for by law.

## IV. Reasons

Revising Delaware's SIP will further the policies and purposes of 7 Del. C. Chapter 60 because the SIP would document actual progress towards reducing ozone precursor chemicals in areas of Delaware that are classified as severe nonattainment with the NAAQS and higher levels of ground-level ozone have been proven to be harmful to human and agricultural health and cause economic losses. In addition, Delaware is required by the federal Clean Air Act to adopt a Milestone Demonstration for the year 1996.

Nicholas A. DiPasquale  
Secretary

### **Delaware 1996 Milestone Demonstration For Kent And New Castle Counties**

### **Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone**

**Submitted to:**  
**US Environmental Protection Agency**  
**By**  
**Delaware Department of Natural Resources and Environmental Control**  
**December 1999**

#### Acronym List

AQM - Air Quality Management Section of DNREC  
BEA - Bureau of Economic Analysis  
BY - Base year  
CAAA - Clean Air Act Amendments of 1990  
CMSA - Consolidated Metropolitan Statistical Area  
CO - Carbon Monoxide  
DAWM - Division of Air and Waste Management of

DNREC  
DeIDOT- Delaware Department of Transportation  
DNREC- Delaware Department of Natural Resources and Environmental Control  
EID - Emission Inventory Development  
EPA - United States Environmental Protection Agency  
FMVCP - Federal Motor Vehicle Control Program  
HPMS - Highway Performance Monitoring System  
I/M - Inspection and Maintenance  
LEV - Low Emission Vehicle  
NAA - Nonattainment Area  
NAAQS- National Ambient Air Quality Standard  
NLEV - National Low Emission Vehicle  
NOx - Oxides of Nitrogen  
OAQPS- Office of Air Quality Planning and Standards of EPA  
OTAG - Ozone Transport Assessment Group  
OTC - Ozone Transport Commission  
OTR - Ozone Transport Region  
PCP - Planning and Community Protection Branch of DNREC  
PEI - Periodic Emission Inventory  
PERC - Perchloroethylene  
POTW - Publicly Owned Treatment Works  
RACT - Reasonably Available Control Technology  
RPP - Rate-of-Progress Plan  
RVP - Reid Vapor Pressure  
SCC - Source Classification Code  
SIC - Standard Industrial Classification  
SIP - State Implementation Plan  
TPD - Tons per day  
TPY - Tons per year  
VHB - Vanasse Hangen Brustlin, Inc.  
VOC - Volatile Organic Compound

#### References

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
2. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.
3. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.
4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-92-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection

Agency, Research Triangle Park, North Carolina, October 1992.

5. *Regulations Governing the Control of Air Pollution.* Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, March 1995.

6. *Procedures for Preparing Emissions Projections.* EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

7. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

8. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

9. *Rate-of-Progress Plan Guidance for the 15% Calculations.* Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. Environmental Protection Agency, Washington, D.C., October 29, 1993.

10. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NO<sub>x</sub>, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

11. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NO<sub>x</sub>, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, November 1999.

12. *Summary of EPA's Nonroad Engine Control Programs.* EPA-420-F-96-016, Office of Mobile Sources, U.S. Environmental Protection Agency, Ann Arbor, Michigan, February 1997.

## Summary

This document addresses Delaware's 1996 milestone demonstration regarding attainment of the 1-hour National Ambient Air Quality Standard for the ground-level ozone. Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone standard. Under Sections 182(b)(1) and 182(d) of the CAAA, Delaware is required to achieve a 15% reduction in emissions of volatile organic compounds (VOC) from its 1990 levels in these two counties. Under this requirement, the 1996 target level of VOC emissions in Kent and New Castle Counties has been determined to be 115.815 tons per day (TPD) in the peak ozone season. To achieve this target, Delaware implemented numerous control measures over a large variety of VOC emission sources from 1990 to 1996.

Delaware's 1996 periodic emission inventory, which has been recently compiled, shows that the 1996 actual VOC emissions in Kent and New Castle Counties are 101.870 TPD. Thus, Delaware demonstrates herein that its 1996 milestone for VOC emission reductions has been successfully met.

## 1. Introduction

### 1.1 Background

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants that pose public health risks and environmental threats. Delaware exceeds the standard for only one of these pollutants, i.e., the ground-level ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the ozone threat. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations.

The CAAA classifies five nonattainment areas (NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In order of increasing severity, they are marginal, moderate, serious, severe, and extreme. Attainment dates depend on the nonattainment designation for individual areas (Section 181, CAAA). The Philadelphia Consolidated Metropolitan Statistical Area (CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Ozone is generally not directly emitted to the atmosphere, but formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. Thus, VOC and NO<sub>x</sub> are defined as two major ozone precursors. In order to reduce ozone concentrations in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NO<sub>x</sub> emissions over several specified periods of years until the ozone standard is attained. These periodic emission reductions are termed as "rate of progress" toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit State Implementation Plans (SIP) to the United States Environmental Protection Agency

(EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NO<sub>x</sub> emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware's rate of progress toward the attainment of ozone standard, they are termed as Delaware's Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NO<sub>x</sub> emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware's periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except 1993 PEI) to demonstrate whether Delaware meets its required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as periodic milestone demonstration (Reference 1).

This document contains Delaware's State Implementation Plan (SIP) revision for demonstrating Delaware 1996 compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as "Delaware 1996 Milestone Demonstration."



**Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.**<sup>1</sup>

<sup>1</sup> This map is adapted from *Major CO, NO<sub>2</sub> and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle

Park, NC, February, 1992.

## 1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Program Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with the consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for performing the work associated with the on-road mobile source emissions included in this document.

The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, DAWM of DNREC, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of the State Implementation Planning (SIP) Program within the PCP Branch, is the project manager of this document. Frank F. Gao, Environmental Engineer of the SIP Program, is the project leader and principal author of this document. Margaret A.J. Pomatto, Environmental Scientist of the Emission Inventory Development (EID) Program within the PCP Branch, is the quality assurance reviewer and technical editor of this document. Questions or comments regarding this document should be addressed to A. Deramo or F. Gao, (302)739-4791, AQM, 156 South State Street, Dover, DE 19901.

## 2. Submittal and Summary of Delaware State Implementation Plans

### 2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of the CAAA requires each state with ozone nonattainment areas to develop a comprehensive and accurate 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This "1990 base year emission inventory" is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996. The inventory is hereafter referred to as the 1990 Base Year Inventory (Reference 2).

The 1990 Base Year Inventory is categorized by source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors (Appendix A). Since volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO) are precursors forming ground level ozone, their emissions in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because contribution of CO to ozone formation is considered

insignificant and Delaware does not contain any CO nonattainment area, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for ozone attainment. A summary of VOC and NOx emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

**Table 1. Summary of VOC and NOx Emissions (TPD) in 1990 Base Year Inventory\***

Source Sector	Kent		New Castle		Total	NAA
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.242	6.130	27.078	85.767	30.320	91.897
Stationary Area Sources	12.967	1.202	34.754	5.398	47.721	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.070	10.620	35.280	27.060	48.350	37.680
Biogenic Sources**	32.460	0	17.510	0	49.970	0
Total Emissions	65.233	25.843	131.296	137.002	196.529	162.845

\*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

\*\* Biogenic NOx emissions are assumed to be negligible.

## 2.2 Delaware 1996 Rate-of-Progress Plan

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996, which describes how Delaware will achieve an actual VOC emission reduction by 1996 that is at least 15% of its VOC emission level in 1990. This plan is thus termed as the Delaware 1996 Rate-of-Progress Plan or 15% Rate-of-Progress Plan (RPP). Delaware developed the 1996 RPP and submitted it to EPA for approval in February 1995 (Reference 3). In this plan, Delaware first established a VOC emission target for 1996 to meet the rate-of-progress requirements specified in the CAAA. Delaware then presented its control measures being promulgated in the 1990-1996 period, and demonstrated that through these measures the required VOC emission target can be met in 1996. A summary of the 1996 RPP is provided in Appendix B of this document. This section presents a brief discussion of the major contents of the 1996 RPP and provides data necessary for the milestone compliance

demonstration.

### 2.2.1 Delaware 1996 VOC Emission Target

The 15% rate-of-progress VOC emission reduction in the period of 1990 to 1996 is estimated from the 1990 baseline level. Section 182(b)(1)(B) defines the baseline emissions as the total amount of actual VOC emissions from all anthropogenic sources in the nonattainment areas. Thus, the 1990 Base Year Inventory VOC emissions in Table 1 must be modified to exclude emissions from biogenic sources and sources outside the nonattainment areas. In addition, emissions of perchloroethylene (PERC) were included in the 1990 Base Year Inventory because it was originally classified by EPA as a photochemically reactive VOC contributing to the formation of ozone. The EPA reclassified PERC as photochemically non-reactive after Delaware's 1990 Base Year Inventory was compiled. Thus, PERC emissions, which are now considered not to participate in the formation of ozone, need to be subtracted from the 1990 Base Year Inventory. The biogenic VOC emissions in the 1990 Base Year Inventory are 32.460 TPD and 17.510 TPD for Kent and New Castle Counties, respectively (Table 1). The PERC emissions in Kent County are 0.188 TPD, all from the area source sector. For New Castle County, the PERC emissions are 0.140 TPD from the point source sector and 0.388 TPD from the area source sector. Details of determination of the PERC emissions can be found in Appendix A of Reference 2. The modified 1990 base year VOC emissions, or the 1990 baseline VOC emissions, are presented in Table 2.

**Table 2. Delaware 1990 Baseline and Adjusted Inventory of VOC Emissions (TPD)**

Source Sector	Kent		New Castle		Total	NAA
	1990	1990	1990	1990	1990	1990
	Baseline	Adjusted	Baseline	Adjusted	Baseline	Adjusted
Point Sources	3.242	3.242	26.938	26.938	30.180	30.180
Stationary Area Sources	12.779	12.779	34.366	34.366	47.145	47.145
Off-Road Mobile Sources	3.494	3.494	16.674	16.674	20.168	20.168
On-Road Mobile Sources	13.070	10.245	35.280	28.515	48.350	38.760
Total Emissions	32.585	29.760	113.258	106.493	145.843	136.253

According to Section 182(b)(1)(D) of the CAAA, emission reductions resulted from the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990 are not creditable for achieving the 15% rate-of-progress VOC

emission reductions in the 1996 RPP. Therefore, the 1990 baseline VOC emissions in Table 2 must be adjusted by removing the VOC emission reductions expected from FMVCP and RVP. The adjusting procedures are provided in an EPA guidance document (Reference 4). Details of the adjustments are provided in Delaware 1996 RPP (Reference 3). The FMVCP/RVP adjustments for Kent and New Castle Counties are 2.825 TPD and 6.765 TPD, respectively. The results of the adjustment are the 1990 Adjusted Baseline Emissions (as shown in Table 2), which are the basis for calculating the required rate-of-progress emission reductions and the emission target for the milestone year 1996.

The 15% VOC emission reductions are required for the entire nonattainment area, i.e., Kent and New Castle Counties. Thus, for Delaware's 1996 RPP, the total required emission reduction ( $ER_{1996}$ ) in TPD is

$$ER_{1996} = EMIS_{1990-Adj} \times 15\% = 136.253 \times 15\% = 20.438 \text{ TPD}$$

where  $EMIS_{1990-Adj}$  is the adjusted 1990 baseline VOC emissions as shown in Table 2. The VOC emission target level in 1996 RPP in TPD is

$$EMIS_{1996T} = EMIS_{1990-Adj} - ER_{1996} = 136.253 - 20.438 = 115.815 \text{ TPD}$$

### 2.2.2 Control Measures and Expected VOC Emissions in 1996 RPP

To achieve the 1996 VOC emission target determined in the previous subsection, Delaware proposed numerous control measures in its 1996 RPP. The control measures included federal mandatory rules and Delaware's regulations to be promulgated prior to the peak ozone season of 1996 (Reference 5). These rules and regulations cover a large variety of VOC emission sources in all source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations have been presented in Delaware 1996 RPP (Reference 3).

In the 1996 RPP, Delaware also projected the 1996 VOC emissions in the peak ozone season assuming all control measures listed in Table 3 could be implemented as expected. The projections were termed as "control strategy projections" and conducted following the methods and procedures specified in EPA's guidance documents (References 4, 6, 7, 8, 9). In the projection calculations, factors such as growth, control efficiency, rule effectiveness, and rule penetration, were considered whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources were conducted using EPA's MOBILE5a software. Details of the control strategy projections were presented in

the 1996 RPP (Reference 3). A summary of the 1996 VOC control strategy emission projections is given in Table 4.

Table 4 indicates that the total VOC emissions projected for Delaware's entire nonattainment area (Kent and New Castle Counties) would be 115.336 TPD, which was smaller than the 1996 target level of 115.815 TPD. Thus, it was concluded in the 1996 RPP that the proposed control measures could be adequate and enough for Delaware to meet the 15% rate-of-progress requirement on VOC emission reductions.

**Table 3. Control Measures Proposed in Delaware's 1996 RPP**

Control Measures and Regulations	Creditability	Effective Date
Point Source Controls		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Surface Coating of Metal Furniture	Creditable	31-May-95
Leaks from Synthetic Organic Chemical,	Creditable	31-May-95
Polymer, and Resin Manufact. Equip.		
New RACT Regulations:		
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	31-Dec-95
SOCMI Reactor Processes and Distillation Operations	Creditable	1-Apr-96
Batch Processing Operations	Creditable	1-Apr-96
Offset Lithography	Creditable	1-Apr-96
Aerospace Coatings	Creditable	1-Apr-96
Industrial Cleaning Solvents	Creditable	29-Nov-94
Non-CTG RACT	Creditable	31-May-95
Federal Benzene Waste Rule	Creditable	Spring 1995
Sanitary Landfills	Creditable	9-Oct-93
Irreversible Process Changes	Creditable	1-Jan-96
<b>Stationary Area Source Controls</b>		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Cutback Asphalt	Creditable	31-May-95

New RACT Regulations:		
Stage I Vapor Recovery-Gasoline Dispensing Facilities	Creditable	15-Nov-94
Emulsified Asphalt	Creditable	31-May-93
Motor Vehicle Refinishing	Creditable	1-Apr-96
Offset Lithography	Creditable	1-Apr-96
Aerospace Coatings	Creditable	1-Apr-96
Stage II Vapor Recovery	Creditable	15-Nov-94
Open Burning	Creditable	8-Feb-95
<b>Off-Road Mobile Source Controls</b>		
Reformulated Fuel	Creditable	1-Jan-95
<b>On-Road Mobile Source Controls</b>		
FMVCP and RVP	Noncreditable	Pre-1990
Tier I Vehicle Emissions Standards	Creditable	Model Year 1994
a. Basic I/M for Kent County	Creditable	1-Jan-91
b. ATP and Pressure Test in Kent County	Creditable	1-Jan-95
ATP and Pressure Test in New Castle County	Creditable	1-Jan-95
Reformulated Fuel	Creditable	1-Jan-95

**Table 4. Delaware 1996 Control Strategy Projections for VOC Emissions (TPD)**

Source Sector	Kent County	New Castle County	Total NAA
Point	1.268	21.391	22.659
Stationary Area	10.770	29.832	40.602
Off-Road Mobile	3.722	16.753	20.475
On-Road Mobile	8.030	23.570	31.600
Total Emission s	23.790	91.546	115.336

### 2.3 Delaware 1993 and 1996 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from

current-year activity data obtained from sources or other agencies (e.g., area sources). Thus, the emissions in a periodic inventory are considered actual emissions in the subject calendar year. Delaware's first periodic inventory after 1990 is the 1993 periodic emission inventory (PEI), which compiles emissions of VOC, NOx, and CO in 1993 from all sources included in the 1990 Base Year Emission Inventory. The 1993 PEI was submitted to EPA as a SIP revision in January 1998 (Reference 10). A summary of the 1993 PEI is presented in Appendix C. The emissions in the 1993 PEI are reported on both an annual basis (in tons per year, or TPY) and a daily basis in the peak ozone season (in tons per day, or TPD). For comparison purposes in this document, daily anthropogenic VOC emissions in the peak ozone season from Kent and New Castle Counties in the 1993 PEI are presented in Table 5.

**Table 5. Anthropogenic VOC Emissions (TPD) in Delaware's 1993 Periodic Emission Inventory**

Source Sector	Kent County	New Castle County	Total NAA
Point Sources	2.857	24.913	27.770
Stationary Area Sources	11.749	35.271	47.020
Off-Road Mobile Sources	3.671	16.824	20.495
On-Road Mobile Sources	10.000	30.510	40.510
Total Emissions	28.277	107.518	135.795

Delaware's 1996 periodic emission inventory (PEI) compiles emissions of VOC, NOx, and CO in 1996 from all sources included in the 1990 Base Year Emission Inventory. The compilation of the 1996 PEI has been recently finished, and will be submitted to EPA as a SIP revision in November 1999. A summary of the 1996 PEI is provided in Appendix D. The emissions in the 1996 PEI are reported on both an annual basis (in tons per year, or TPY) and a daily basis in the peak ozone season (in tons per day, or TPD) (Reference 11). For comparison purposes in this document, daily anthropogenic VOC emissions in the peak ozone season from Kent and New Castle Counties in the 1996 PEI are presented in Table 6. In the next section, emission data in Table 6 will be used to conduct the 1996 milestone compliance demonstration.

**Table 6. Anthropogenic VOC Emissions (TPD) in Delaware's 1996 Periodic Emission Inventory**

Source Sector	Kent County	New Castle County	Total NAA
Point Sources	0.638	14.340	14.978
Stationary Area Sources	6.301	25.905	32.206
Off-Road Mobile Sources	4.030	17.046	21.076
On-Road Mobile Sources	7.520	26.090	33.610
Total Emissions	18.489	83.381	101.870

### 3. Delaware 1996 Milestone Compliance Demonstration

#### 3.1 Milestone Compliance Demonstration

In the 1996 RPP, Delaware has determined that the 1996 target level of VOC emissions for its nonattainment area (i.e., Kent and New Castle Counties) would be 115.815 TPD in the peak ozone season. Delaware has also assessed that, through implementing necessary emission control measures proposed in the 1996 RPP, the target level could be achieved. In the 1996 PEI, Delaware has shown that the actual total VOC emission in 1996 is 101.870 TPD in the peak ozone season. The 1996 target level, the 1996 control strategy projection, and the 1996 PEI actual emission are summarized in Table 7. Since the 1996 PEI actual VOC emission is lower than the required target level, Delaware demonstrates herein that its 1996 milestone for VOC emission reductions has been successfully met.

**Table 7. Milestone Compliance Demonstration for 1996**

1996 Required	1996 Control		1996 PEI
Emission Target (TPD)	Strategy (TPD)	Projection	Actual Emission (TPD)
115.815	115.336		101.870

#### 3.2 Effectiveness of Control Measures in Individual Source Sectors

In the 1996 RPP, Delaware has anticipated that control measures proposed for individual source sectors would lead to specific VOC emission levels in the corresponding source sectors in the 1996 milestone year. The anticipated VOC emission levels, or the control strategy projections, for individual source sectors are summarized in Table 8. For comparison purposes, the 1996 PEI actual VOC emission levels from individual source sectors are also listed in Table 8. In addition, differences between the 1996 RPP anticipated emission levels and the 1996 PEI actual emission

levels are also presented in Table 8. Comparison and analysis of the 1996 RPP data and the 1996 PEI data will help assess relative effectiveness of controls in individual source sectors and direct future attention and efforts to VOC emission controls.

From Table 8, it can be seen that the 1996 PEI emissions from point and area source sectors are lower than the 1996 RPP anticipated levels. This fact reflects the effectiveness of VOC emission controls, primarily those of Reasonably Available Control Technology (RACT), implemented prior to the peak ozone season of 1996 upon stationary point and area sources (Table 3). In contrast, the 1996 PEI emissions from off-road and on-road mobile sources are higher than the 1996 RPP anticipated emission levels. It should be noted that the off-road sector was the least controlled sector in the 1996 RPP. The only control measure for this sector was the requirement of using reformulated gasoline in gasoline-fueled off-road engines. The VOC emission reduction from this sector was anticipated to be only 0.509 TPD in the peak ozone season (Reference 3). Delaware speculates that the lack of effective control measures over the off-road engines, especially diesel engines, would be a major cause of not achieving the anticipated VOC emission level in this source sector. In recent years, EPA has realized this lack of controls and begun turning its attention to off-road mobile sources that are believed to contribute significantly to air pollution (Reference 12). Delaware's finding provides supporting evidence for EPA's efforts in controlling VOC emissions from off-road mobile sources.

**Table 8. Comparison of VOC Emissions between 1996 RPP Control Strategy Projections and 1996 PEI Actual Emissions (TPD)**

	1996 RPP	1996 PEI	Difference	
Source Sector	(a)	(b)	(c)*	(d)**
Point Sources	22.659	14.978	-7.681	-33.9%
Stationary Area Sources	40.602	32.206	-8.396	-20.7%
Off-Road Mobile Sources	20.475	21.076	0.601	2.9%
On-Road Mobile Sources	31.600	33.610	2.010	6.4%

Total Emissions (TPD)	115.336	101.870	-13.466	-11.7%
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\*(c)=(b)-(a). \*\*\*(d)=(c)/(a).

The on-road mobile source sector has also shown a higher-than-anticipated VOC emission level in the 1996 PEI (Table 8). A comparison of the mobile source emissions in Table 4 and Table 6 by county indicates that the higher PEI VOC emission is produced in New Castle County. A contributing factor might be the increase in population. According to Delaware Department of Transportation, an unexpected population increase happened in New Castle County in the 1990s, with an annual average of 0.8% higher than that originally projected. This population increase caused an increase in VMT, especially in the employment-based trips.

As shown in Table 8, the total VOC emissions in the 1996 PEI are 11.7% lower than the control strategy projections calculated in the 1996 RPP. This demonstrates that the overall effectiveness of all control measures as a whole in the main plan of the 1996 RPP has actually met the 15% rate-of-progress requirements for VOC emission reductions. Thus, there is no need to introduce any additional controls specified in the contingency plan of the 1996 RPP (Reference 3). The contingency measures thereof can be then carried over to Delaware's next rate-of-progress plan (i.e., the 1999 RPP), which will be addressed in a separate SIP revision document.

### 3.3 Trends of VOC Emissions from 1990 to 1996

Prior to the peak ozone season of the 1996 milestone year, Delaware implemented numerous control measures over a large variety of VOC emission sources in its nonattainment area (Table 3). The effectiveness of these control measures has been discussed in the previous subsection. An analysis of emission trends from 1990 to 1996 will provide additional information in assessing the effectiveness of these controls and understanding the emission situations in individual source sectors. For this purpose, the actual anthropogenic VOC emissions from Delaware 1990 base year inventory, the 1993 PEI and the 1996 PEI are summarized in Table 9.

**Table 9. Trends of Anthropogenic VOC Emissions in Delaware Nonattainment Area from 1990 Base Year to 1996 Milestone Year**

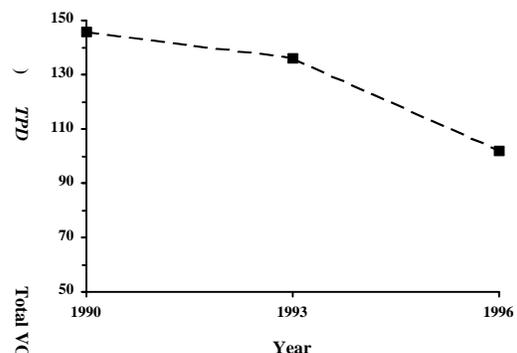
Source Sector	1990 Baseline	VOC Emissions 1993 PEI	(TPD) 1996 PEI	% Change* 1990-1996

Point Sources	30.180	27.770	14.978	-50.4%
Stationary Area Sources	47.145	47.020	32.206	-31.7%
Off-Road Mobile Sources	20.168	20.495	21.076	4.5%
On-Road Mobile Sources	48.350	40.510	33.610	-30.5%
Total Emissions	145.843	135.795	101.870	-30.2%

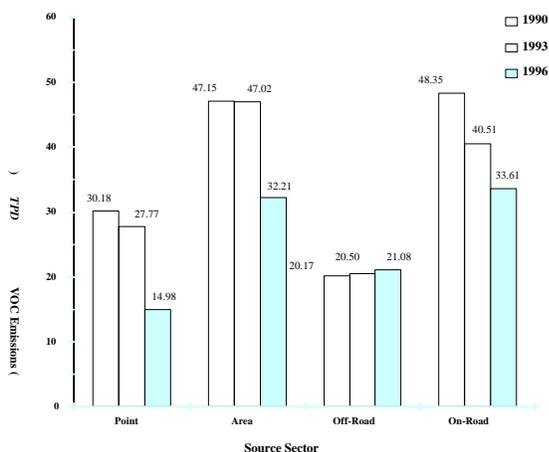
\* % Change = (1996 PEI - 1990 Baseline)/1990 Baseline.

As shown in Table 9, the total anthropogenic VOC emissions in Delaware's nonattainment area decreased continuously from 1990 to 1996. The total VOC emission reported in the 1993 PEI is 6.9% lower than the 1990 baseline level. The total VOC emission in the 1996 PEI is 30.2% lower than the 1990 baseline level. The decreasing trend in anthropogenic VOC emissions from 1990 to 1996 is also plotted in Figure 2 using the total emission data in Table 9. The more rapid reduction between 1993 and 1996, as shown in Figure 2, is due to the fact that a majority of controls over VOC emissions were implemented in that period (Table 3).

The anthropogenic VOC emissions from individual source sectors are also summarized in Table 9. The trends of these emissions from 1990 to 1996 are plotted in Figure 3. From Table 9 and Figure 3, it can be seen that VOC emissions from point, stationary area and on-road mobile source sectors show significant reductions of 50.4%, 31.7% and 30.5%, respectively, from 1990 to 1996. In contrast, VOC emissions in the off-road mobile sector show an unexpected 4.5% increase in this period. Again, this increase indicates that closer attention and more control measures are needed in this source sector in Delaware's post-1996 rate-of-progress planning.



**Figure 2. Trend of Total VOC Emissions in Delaware Nonattainment Area from the 1990 Base Year to the 1996 Milestone Year**



**Figure 3. Comparison of Actual VOC Emissions in Individual Source Sectors in Delaware Nonattainment Area from 1990 to 1996**

#### 4.0 Documentation

APPENDIX A. Summary of Delaware's 1990 Base Year Emission Inventory

APPENDIX B. Summary of Delaware's 1996 (15%) Rate-of-Progress Plan

APPENDIX C. Summary of Delaware's 1993 Periodic Emission Inventory

APPENDIX D. Summary of Delaware's 1996 Periodic Emission Inventory

(Hard copies of these appendixes are available upon request. Written requests should be addressed to Mr. A. Deramo, Program Manager, SIP Development Program, PCP-AQM-DAWM, DNREC, 156 South State Street, Dover, DE 19901, or at e-mail address: [aderamo@dnrec.state.de.us](mailto:aderamo@dnrec.state.de.us))

### **DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Chp. 60)

Secretary's Order No. 2000-A-0007

**Delaware's 2002 Rate of Progress Plan for Kent and New Castle Counties for Demonstrating Progress Toward Attainment of the One-Hour National Ambient Air Quality Standard for Ground-Level Ozone**

Date of Issuance: February 3, 2000

Effective Date of the Plan: March 13, 2000

#### I. Background

On Tuesday, August 3, 1999, beginning at 6:00 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed Delaware 2002 Rate-of-Progress Plan. After the hearing, and at the request of the Hearing Officer, the Department submitted its evaluation of the technical evidence in the record by memorandum ("AQM Technical Evidence Memorandum") to the Hearing Officer dated August 23, 1999. The AQM Technical Evidence Memorandum is expressly incorporated herein. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated September 14, 1999, and that memorandum is expressly incorporated herein by reference.

#### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated September 14, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

#### III. Order

In view of the above, I hereby order that the 2002 Rate of Progress Plan be adopted as proposed at the hearing.

#### IV. Reasons

Delaware's 2002 Rate of Progress Plan will further the policies and purposes of 7 Del. C. Chapter 60, because the Plan mandates implementation of an actual VOC or equivalent NO<sub>x</sub> emission reduction of at least 3 percent per year in Kent and New Castle Counties which will result in progress toward attaining the 1-hour national ambient air quality standard for ground level ozone. The record demonstrates that progress towards reaching the national ambient air quality standard for ground-level ozone will have a positive effect on the health of Delaware's citizens and the environment because high levels of ground-level ozone can harm the respiratory system, cause breathing problems, throat irritation, coughing, chest pains and greater susceptibility to respiratory infection. In addition, the record demonstrates that Delaware is required by the federal Clean Air Act to adopt a Plan to make progress towards national ambient air quality standards.

Nicholas A. DiPasquale  
Secretary

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**Acronym List**

AIRS-	EPA's Aerometric Information Retrieval System.
AFS-	AIRS Facility Subsystem.
AMS-	AIRS Area and Mobile Subsystem.
AQM-	Air Quality Management Section
BEA-	Bureau of Economic Analysis
CAAA-	Clean Air Act Amendments of 1990
CMSA-	Consolidated Metropolitan Statistical Area
CO -	Carbon Monoxide
DelDOT-	Delaware Department of Transportation
DNREC-	Delaware Department of Natural Resources and Environmental Control
EPA-	United States Environmental Protection Agency
EPS2.0-	EPA's Emissions Preprocessor System software
FMVCP-	Federal Motor Vehicle Control Program
HPMS-	Highway Performance Monitoring System
I/M -	Inspection and Maintenance
LEV-	Low Emission Vehicle
MPO-	Metropolitan Planning Organization
mmBTU -	Million British Thermal Unit
mmcf-	Million Cubic Feet
NAAQS-	National Ambient Air Quality Standard
NLEV-	National Low Emission Vehicle
NOx -	Oxides of Nitrogen
OTAG-	Ozone Transport Assessment Group
OTC-	Ozone Transport Commission
OTR-	Ozone Transport Region
PAPS-	Point and Area Projection System
PERC-	Perchloroethylene
POTW-	Publicly Owned Treatment Works
RACT-	Reasonably Available Control Technology
RPP-	Rate-of-Progress Plan
RVP-	Reid Vapor Pressure
SCC-	Source Classification Code
SIC -	Standard Industrial Classification
SIP -	State Implementation Plan
VHB-	Vanasse Hangen Brustlin, Inc.
VOC-	Volatile Organic Compound

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Year Inventory, EPA-452/R-92-010, Office of Air Quality and Standards, EPA, Research Triangle Park, NC, November 1992.

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17. The 1990 OTC NO<sub>x</sub> Baseline Emission Inventory. EPA-454/R-95-013, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, July 1995.

18. Delaware NO<sub>x</sub> Budget Program Regulation No. 37. Department of Natural Resources and Environmental Control, Dover, DE, April 1999.

19. Alternative Control Techniques Document: Automobile Refinishing, EPA-453/R-94-031, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, April 1994.

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## INTRODUCTION

1. Background

This document contains the summary of Delaware’s State Implementation Plan (SIP) revision for the milestone year of 2002 to address adequate rate of progress toward attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) as set forth in the Clean Air Act Amendments of 1990 (hereafter referred to as CAAA)<sup>1</sup>. The plan is hereafter referred to as “Delaware 2002 Rate-of-Progress Plan”, or simply as “the 2002 RPP”.

The CAAA sets forth National Ambient Air Quality Standards for six air pollutants that pose public health risks and environmental threats. Delaware exceeds the standard for only one of these pollutants, i.e., the ground level ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations. Ozone is generally not directly emitted to the atmosphere, but formed in the atmosphere by chemical reactions between volatile organic compounds (VOC), nitrogen oxides (NOx), and carbon monoxide (CO) in the presence of sunlight. Consequently, in order to reduce ozone concentrations, the CAAA requires specific amounts of reductions in anthropogenic VOC emissions and/or NOx emissions over a specified period of years until the ozone standard is attained. These periodic emission reductions are termed as “rate of progress” toward the attainment of the ozone NAAQS.

The CAAA defines five nonattainment classifications for areas that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In order of increasing severity, they are marginal, moderate, serious, severe, and extreme. Attainment dates depend on the classification designation for individual areas.<sup>2</sup> The CAAA also establishes the Ozone Transport Region (hereafter referred to as OTR) where the interstate transport of air pollutants from one or more states contributes significantly to violations of the ozone NAAQS in one or more other states. This single transport region for ozone includes the states of Delaware, Connecticut, Maine, Maryland, Massachusetts, New

Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia.<sup>3</sup> The OTR includes the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) which is classified as a severe nonattainment area (Figure 1). As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this summary document and the 2002 RPP apply only to Kent and New Castle Counties.

Section 182 (d) of the CAAA requires states to submit a State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA), for each ozone nonattainment area

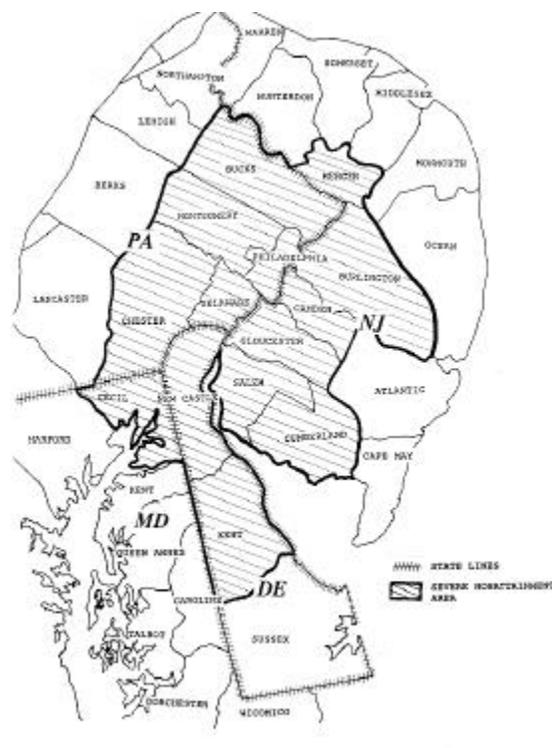


Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.<sup>4</sup>

classified as severe or above, that achieves a 15% net reduction, by November 15, 1996, of actual anthropogenic (human-caused) volatile organic compound (VOC) emissions. In addition to the 15% reduction, Section 182(d) also requires states to submit SIP revisions that achieve an actual VOC emission reduction of at least 3% per year

1. Federal Clean Air Act, 42 U.S.C.A. 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. Clean Air Act Amendments of 1990, Title 1, Part D, Section 181.

3. Clean Air Act Amendments of 1990, Title 1, Part D, Section 184 (a).

averaged over each consecutive 3-year period beginning November 15, 1996, until the area's applicable attainment date. These rate-of-progress emission reductions are based on the states' 1990 emission levels. The SIP revision for the 1990-1996 reductions is termed as "15% Rate-of-Progress Plan (RPP)" and the plans for an average 3% per year reduction over each 3-year period after 1996 is termed as "Post-1996 Rate-of-Progress Plans". The CAAA also provides for crediting of VOC emissions reductions achieved in the 1990-1996 period to the post-1996 rate-of-progress plans if they are in excess of the 15% VOC reductions requirement, and substitution of any anthropogenic nitrogen oxides (NOx) emissions reductions, net of growth, occurring in the post-1990 period for the post-1996 VOC emission reduction requirements. In addition to the average annual 3% VOC/NOx emission reduction, Section 182(d) of CAAA also requires the States to provide for photochemical grid modeling demonstrations for the attainment of ozone NAAQS by the applicable attainment date.

Through a memorandum dated on March 2, 1995, from Mary D. Nichols, Assistant Administrator for Air and Radiation, EPA provides for the States with serious and above ozone nonattainment areas a two-phased approach to the post-1996 RPPs.<sup>1</sup> Briefly, in Phase I, the States are required to develop a plan for the milestone year of 1999 which includes necessary control measures to achieve a 9% reduction of VOC and/or NOx emissions between 1996 and 1999. In Phase II, the States are required to assess the regional and local control measures necessary to meet the rate-of-progress requirements and achieve attainment. On December 23, 1997, EPA provided further guidance, along with a memorandum from Richard D. Wilson, Acting Assistant Administrator of Air and Radiation, on how to prepare the Phase II submittal.<sup>2</sup>

## 2. Delaware State Implementation Plan Submittals

All the rate-of-progress emission reductions

4. This map is adapted from Major CO, NO<sub>2</sub> and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

1. Memorandum: Ozone Attainment Demonstrations, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, Washington, D.C. 20460, March 2, 1995.

mentioned are based on the States' 1990 emission levels. Delaware's 1990 Base Year Ozone Emission Inventory, which is an inventory of the 1990 actual VOC, NOx, and CO emissions from all sources in Delaware, was submitted to EPA as a SIP revision on May 27, 1994, and was approved by EPA on March 25, 1996. Since the ozone NAAQS attainment date for Kent and New Castle Counties is 2005, Delaware is required to submit the 15% RPP, and RPPs for three post-1996 milestone years, i.e., 1999, 2002, and 2005. Delaware's 15% RPP was submitted to EPA as a SIP revision in February 1995. In this plan, Delaware showed that, by implementing necessary control measures, the required 15% VOC emission reduction could be successfully met by 1996. The 15% RPP was conditionally approved by EPA in May 1997. Delaware's 1999 RPP, the first post-1996 SIP revision developed according to the Phase I requirements set forth in the Nichols' Memorandum (please see Footnote 4), was submitted to EPA in December, 1997. In June 1999, Delaware submitted to EPA the Amendments of the 1999 RPP. In the 1999 RPP (as amended in ~~April~~ June 1999), Delaware shows that the 9% VOC and/or NOx emission reductions required for the 1996-1999 period can be successfully met by implementing additional control measures in this time period. Delaware also demonstrates that an additional 3% VOC/NOx emission reduction can be achieved, without further rulemaking activities, to meet the contingency requirements specified by EPA.<sup>3</sup> In May 1998, Delaware submitted to EPA the Phase II attainment demonstration document based on EPA's guidance. In this Phase II document, Delaware makes a commitment to submit a SIP revision to EPA before the end of 2000 to address the emission reductions for the post-1999 rate-of-progress milestone years up to the attainment date for the 1-hour ozone NAAQS (Delaware's attainment date for the 1-hour ozone NAAQS is 2005). Both Phase I and Phase II submittals are currently under EPA's review.

On July 18, 1997, EPA revised the 1-hour ozone NAAQS with an 8-hour standard at a level of 0.08 ppm.<sup>4</sup>

2. Memorandum and Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM<sub>10</sub> NAAQS, Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, U.S. EPA, Washington, D.C. 20460, December 23, 1997.

3. Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, February 1994.

However, the 1-hour standard will continue to apply to a nonattainment area for an interim period until EPA makes a determination that the area has air quality meeting the 1-hour standard. As a consequence, the provisions of Section 182 of the CAAA will continue to apply to the subject nonattainment areas until EPA makes determinations that these areas have met the 1-hour ozone standard (please see Footnote 5). The continuation of the 1-hour standard requires that Delaware submit to EPA, before the end of 2000, fully adopted Rate-of-Progress Plans for the milestone year of 2002 and for the milestone year of 2005. Delaware 2002 Rate-of-Progress Plan is for the milestone year of 2002. Delaware's 2005 Rate-of-Progress plan will be addressed in a separate SIP revision.

### **3. Organization of the 2002 RPP**

The 2002 RPP is a fully-adopted Rate-of-Progress Plan with (a) emission target calculations for the milestone year of 2002, and (b) all control measures and regulations adopted and/or to be adopted as necessary to achieve the rate-of-progress requirements set forth for 2002. In general, the document contains five parts as explained below.

#### **Part I. The 1990 Base Year Inventory Summary and 2002 Target Levels of VOC and NOx Emissions**

The 2002 Target Levels of VOC and NOx Emissions are the maximum amounts of anthropogenic VOC and NOx emissions allowed in the years of 2002 in Kent and New Castle Counties in order to meet the 3% per year VOC/NOx reduction requirements. As previously mentioned, the basis for calculating these target levels is the 1990 Base Year Emission Inventory, which is an inventory of actual VOC, NOx, and CO emissions that occurred in Delaware in 1990. Section 182(c)(2)(C) of CAAA allows NOx reductions that occur after 1990 to be used to meet the post-1996 rate of progress requirements. The condition for meeting the rate-of-progress requirements is that the sum of all creditable VOC and NOx emissions must equal 3% per year averaged over the applicable milestone period. In the event of NOx substitution, separate target levels of emissions will have to be calculated for VOC and NOx. Part I presents a summary of the 1990 Base Year Inventory and presents also the 6-step

process for determining the 2002 Target Levels of VOC emissions with and without NOx substitution.

#### **Part II. The 2002 Current Control Projection Inventory & Required VOC and NOx Emission Reductions**

The Current Control Projections are estimates of the amount of VOC and NOx emissions that will occur in 2002, taking into account the effects of economic growth, and assuming no new emission control measures would be implemented between 1990 and the corresponding milestone year, i.e., 2002. The purpose of calculating the 2002 Current Control Projection Inventory is to determine the amount of growth in VOC and NOx emissions by 2002 that must be offset. Part II discusses the methodology used to develop 2002 growth factors and shows how the growth factors are used to determine the 2002 Current Control Projection Inventory.

#### **Part III. The 2002 Control Strategy Projection Inventory and Emission Control Measures**

The 2002 Control Strategy Projections are estimates of the amount of VOC and NO<sub>x</sub> emissions that will occur in 2002, taking into account the effects of economic growth and continued benefits of control strategies in the 15% RPP and the 1999 RPP, and including the benefits from new control measures that will be implemented during the 1999-2002 period. The purpose of calculating the 2002 Control Strategy Projection Inventory is to determine if the new national, regional and state level control measures, which will be implemented between 1999 and 2002 will reduce VOC and/or NOx emissions sufficiently to offset growth and to meet the 2002 Target Levels of VOC and NOx emissions calculated in Part I. Part III discusses the methodology used to develop the 2002 Control Strategy Projection Inventory and presents the individual control measures to be implemented by 2002 with their associated VOC and NOx emissions reductions.

#### **Part IV. Contingency Plan for the 2002 RPP**

Contingency measures are required by the CAAA to be included in the rate-of-progress plans to remedy the state's failure to meet the emission reduction target in a milestone year. The CAAA requires that, in the event of such a failure, the contingency measures can be implemented (1) without any further rulemaking actions by the state, and (2) to achieve an additional 3% emission reduction over the

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4. Environmental Protection Agency: National Ambient Air Quality Standard for Ozone; Final Rule. Federal Register, Vol. 62, No. 138, Friday, July 18, 1997.

1990 baseline level. Part IV discusses the contingency measures and the potential emission reductions associated with each measure.

#### Part V. Documentation

Numerous appendices are included in this part to backup the discussion and conclusions in Part I through Part IV. These appendices include background information, emission data, projection methodologies and calculations, relevant guidance memorandums from EPA, and other references cited in Part I through Part IV.

It should be pointed out that there exist minute discrepancies among numbers in various parts in this plan. These discrepancies are due to rounding errors in calculations and are of a magnitude of  $\pm 0.001$  TPD. These discrepancies do not affect the final calculation results and the conclusions of the plan.

#### 4. Responsibilities

The agency with direct responsibility for preparing and submitting the 2002 RPP is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Program Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with the consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for performing the work associated with the on-road mobile source portions of this document. Various other Delaware agencies, including the Department of Labor, the Department of Public Safety, and the Department of Agriculture, provide information used in some portions of this document. These agencies will be referred to and acknowledged in appropriate locations in the document.

The working responsibility for Delaware's air quality planning falls within the Planning and Community Protection Branch of the Air Quality Management Section of DNREC, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of Emissions Research, Planning and Attainment Group within the Planning and Community Protection Branch, is the project manager and chief editor of the 2002 RPP. Joseph Cantalupo, Manager of DelDOT's Intergovernmental Coordination Section, Office of Planning, is responsible for managing the work associated with the on-road mobile source portions of this plan. Thomas F. Wholley, Director of Air Quality Services, Vanasse Hangen Brustlin, Inc., is

responsible for contract work associated with the on-road mobile source portions of this plan.

The following personnel of the Emissions Research, Planning and Attainment Group under Alfred R. Deramo are instrumental in preparing this plan:

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### PART I

#### THE 1990 BASE YEAR INVENTORY SUMMARY AND THE 2002 TARGET LEVELS OF VOC AND NO<sub>x</sub> EMISSIONS

Under the rate-of-progress provisions in Section 182(d) of the CAAA, Delaware is required to achieve an average 3% per year VOC emission reduction from the 1990 baseline emission levels in Kent and New Castle Counties in the milestone period of 1999-2002. In order to determine necessary and adequate control strategies for achieving the required emission reductions in the 2002 RPP, the target level of VOC emissions in the milestone year of 2002 must first be calculated. In addition, Section 182(c)(2)(C) of the CAAA permits the substitution of NO<sub>x</sub> emission reductions for the post-1996 VOC emission reductions required for the adequate rate-of-progress. Such NO<sub>x</sub> substitutions for VOC emission reductions require the calculation of the 2002 target level of NO<sub>x</sub> emissions.

The 3% per year rate-of-progress reductions in VOC and NO<sub>x</sub> emissions for the 1999-2002 period are determined from the 1990 Base Year Inventory after the inventory is adjusted for non-creditable emission reductions due to (1) Federal Motor Vehicle Control Program (FMVCP) tailpipe or evaporative standards promulgated prior to 1990, (2) Federal regulations specifying Reid Vapor Pressure (RVP) limits on gasoline for nonattainment areas, (3) State

regulations required to correct deficiencies in Reasonably Available Control Technology (RACT) rules, and (4) State regulations required to establish or correct Inspection and Maintenance (I/M) programs. In this part of the 2002 RPP, a summary of the 1990 Base Year Inventory for Kent and New Castle Counties is first presented, followed by the procedures and calculations for estimating the 2002 target levels of VOC emissions with and without NOx substitution.

### 1.1. The 1990 Base Year Inventory Summary

The rate-of-progress provisions in the CAAA require states in nonattainment areas to submit to the EPA a current inventory of actual emissions from all sources of relevant pollutants.<sup>1</sup> This inventory is to be used as the basis for determining required emissions reductions. The calendar year 1990 is the time frame for this current emissions inventory which is called the 1990 Base Year Ozone State Implementation Plan (SIP) Emissions Inventory. Delaware's 1990 Base Year Inventory was submitted to the EPA as a SIP

revision on May 27, 1994, and approved by EPA on March 25, 1996 (Reference 1, hereafter referred to as Delaware's 1990 Base Year Inventory).

The 1990 Base Year Inventory is categorized into point, stationary area, off-road mobile, on-road mobile and biogenic sources of emissions. Volatile organic compounds (VOC), nitrogen oxides (NOx), and carbon monoxide (CO) are the ozone precursor emissions reported for each category in the 1990 Base Year Inventory. Because CO is only marginally reactive in producing ozone, the CO component of the 1990 Base Year Inventory is not included in the rate-of-progress requirements. Therefore, only the VOC and NOx components of the 1990 Base Year Inventory are summarized in this part, as shown in Table 1. The values in Table 1-1 are reported in tons per day in the peak ozone season. The peak ozone season for Delaware is defined as from June 1 through August 31.

**Table 1**  
**1990 Base Year Inventory Summary of VOC and NOx Emissions (in TPD ) by County in Peak Ozone Season**

1. 9 CAAA, Title I, Part D, Sec. 172(c)(3) and Sec. 182.

Source Category	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.242	6.130	27.078	85.767	30.320	91.897
Stationary Area Sources	12.967	1.202	34.754	5.398	47.721	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.07	10.62	35.28	27.06	48.35	37.68
Biogenic Sources*	32.46	0.00	17.51	0.00	49.97	0.00
Total Emissions	65.233	25.843	131.296	137.002	196.529	162.845

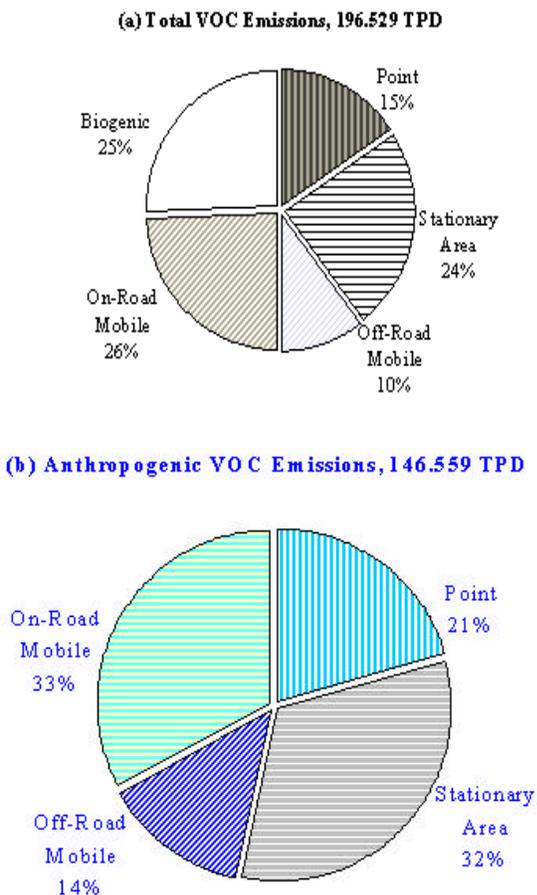
The percent VOC contribution of each source sector listed in Table 1 to the total VOC emissions from Kent and New Castle Counties is shown in Figure 2. These relative proportions are shown for the total inventory of all sources, as well as for the anthropogenic inventory that excludes biogenic emissions. The anthropogenic inventory is the inventory from which the Base Year Inventory is adjusted and the 2002 Target Levels of VOC (and NOx) emissions are calculated.

The percent NOx contribution of each source sector listed in Table 1 to the total NOx emissions from Kent and

New Castle Counties is shown in Figure 3. All NOx emissions in the 1990 Base Year Inventory are from anthropogenic sources. The NOx emissions from biogenic sources are considered negligible and are not included in the 1990 Base Year Inventory.

The 1990 Base Year emissions data were downloaded from the EPA's Aerometric Information Retrieval System (AIRS) to a PC work file for the purpose of developing the 15% Rate-of-Progress Plan, the 1999 Rate-of-Progress Plan, and this 2002 Rate-of-Progress Plan. A more detailed explanation of the 1990 Base Year Inventory data and the methods used to develop the data is contained in Delaware's

1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NO<sub>x</sub>, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, DE, as revised in May 1994 (Reference 1).



**Figure 2. Contribution of Source Components to Total 1990 Base Year VOC Emissions in Delaware's Non-Attainment Area (NAA).**

**Figure 3. Contribution of Source Components to Total 1990 Base Year VOC Emissions in Delaware's Non-Attainment Area (NAA).**

### 1.2. Guidance for Calculating Emission Target Levels for Post-1996 Milestone Years

The Clean Air Act Amendments of 1990 (CAAA) is the principal guidance for determining the target levels of VOC and NO<sub>x</sub> emissions in a state's Rate-of-Progress Plans (RPP). Based on the CAAA, EPA has issued various guidance documents for States to follow in their RPP development. This section of the 2002 RPP briefly outlines the requirements and procedures specified in the CAAA and relevant EPA guidance documents for determining emission target levels in the rate-of-progress milestone years.

The target levels of VOC and NO<sub>x</sub> emissions for a milestone year is the maximum amount of total anthropogenic VOC and NO<sub>x</sub> emission to be allowed for the entire subject nonattainment area (NAA) in that specific milestone year. The CAAA sets forth restrictions on certain control measures toward the VOC emission reductions to meet the rate-of-progress requirements. Briefly, all real, permanent, and enforceable post-1990 VOC emission reductions are creditable toward the rate-of-progress reductions except (1) the Federal Motor Vehicle Control Program (FMVCP) tailpipe or evaporative standards promulgated prior to 1990, (2) the Federal Regulations specifying Reid Vapor Pressure (RVP) limits for gasoline for nonattainment areas, (3) the State regulations required to correct deficiencies in Reasonably Available Control

Technology (RACT) rules, and (4) the State regulations required to establish or correct vehicle Inspection and Maintenance (I/M) programs.<sup>1</sup> After adjustments for these non-creditable emission reductions and for emissions of any photochemically non-reactive VOCs such as perchloroethylene (PERC), the 1990 Base Year Inventory for Anthropogenic Emissions is termed as the 1990 Adjusted Base Year (or Baseline) Inventory. This adjusted baseline inventory forms the basis for determining the rate-of-progress (i.e., percentage) emission reductions, and the corresponding emission target levels for individual milestone years. The basic procedures for developing the adjusted base year inventory are outlined in an EPA document entitled "Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate-of-Progress Plans" (Reference 2, hereafter referred to as The Guidance on the Adjusted Base Year Inventory).

For the milestone year of 1996, the target level is required for VOC emissions only. This can be done by multiplying the VOC emission level in the 1990 Adjusted Base Year Inventory by 15% to obtain the required emission reduction, and subtracting it from the 1990 adjusted level. Details of Delaware's 1996 emission target calculations can be found in The Delaware 15% Rate-of-Progress Plan, Delaware Department of Natural Resources and Environmental Control, Dover, DE, February, 1995 (Reference 3). For the post-1996 milestone years, the target levels are to be calculated for VOC emissions, as well as for NOx emissions if NOx substitution is selected by states to meet the required rate-of-progress reductions. Section 182(c)(2)(C) of the CAAA allows states to use actual NOx emission reductions obtained after 1990 to meet the post-1996 VOC emission reduction requirements. If a state chooses to substitute its NOx emission reductions for VOC emission reductions, such substitution must meet the criteria outlined in the EPA's NOx Substitution Guidance (Reference 4). These criteria are (1) the sum of all creditable VOC and NOx emission reductions must equal 3% per year averaged over each applicable milestone period, and (2) the overall VOC and NOx emission reductions must be consistent with the area's modeled attainment demonstration. The second criterion, i.e., the consistency requirement, is modified by a policy memorandum issued by EPA on July 12, 1994.<sup>2</sup> The modification requires that (1) the State must have adopted RACT regulations for NOx emission control, and (2) the State must demonstrate, through modeling of at least one

episode with photochemical Urban Airshed Modeling (UAM) or Regional Oxidant Modeling (ROM), the usefulness of NOx controls in reducing the ground-level ozone concentrations. The State of Delaware satisfies these two requirements. Delaware adopted NOx RACT regulations on November 24, 1993 and these regulations became effective on May 31, 1995 (Reference 5). The Sensitivity Analysis conducted by Rutgers University for the Philadelphia-New Jersey UAM Airshed has demonstrated that as much as 75% of VOC and 75% of NOx reductions could be necessary for the entire domain to achieve the ground-level ozone standard. Details of this analysis are presented in The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties, Department of Natural Resources and Environmental Control, Dover, DE, as amended in June 1999 (References 6 and 7). Delaware's two nonattainment counties (i.e., Kent and New Castle) are included in the modeled airshed domain. In addition, the Regional and Urban Scale Modeling (RUSM) performed by Ozone Transport Assessment Group (OTAG) has shown that NOx emission and transport controls are crucial for Delaware to reach attainment of the ozone standard (Reference 8). Therefore, Delaware meets the consistency requirement and can choose to control NOx emissions and substitute NOx emission reductions for VOC emission reductions to meet the rate-of-progress requirements.

To determine the control strategies for achieving a 9% VOC/NOx emission reduction for each 3-year period after 1996, the target levels of VOC and NOx emissions for the three post-1996 milestone years (i.e., 1999, 2002, and 2005 for Delaware) need to be calculated. For these post-1996 milestone years, the target levels of VOC and NOx emissions for a subject milestone year depend on the target levels in the previous milestone year. According to EPA's Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration (Reference 9, hereafter referred to as The Guidance on the Post-1996 RPP), the following equation must be used for calculating emission target levels for a subject milestone year

$$TL_x = TL_y - BG_r - FT_x \quad (1)$$

where:

2. Memorandum: Clarification of Policy for Nitrogen Oxides (NOx) Substitution, John S. Seitz, Director, Office of Air Quality Planning and Standards, US EPA, July 12, 1994, included in Appendix H.

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1. Clean Air Act amendment of 1990, Title I, Part D, Section 182(b)(1)(D).

- $x$  = subject milestone year (e.g., 2002),  
 $y$  = previous milestone year (e.g., 1999),  
 $TL_x$  = target level of emissions for year  $x$ ,  
 $TL_y$  = target level of emissions for year  $y$ ,  
 $BG_r$  = Emission reduction required for year  $y$ ,  
 $FT_x$  = Fleet turnover correction for year  $y$  to year  $x$ .

### 1.3. The 2002 Target Levels of VOC and NOx Emissions

From Equation (1), it can be seen that the target level of VOC and NOx emissions for a subject milestone year (i.e., 2002) is calculated by subtracting, from the target levels in the previous milestone year (i.e., 1999), the required rate-of-progress emission reductions (i.e., 9% for the period of 1999-2002) and the fleet turnover correction for the corresponding milestone period. There are six major steps in calculating the target level of emissions for the milestone year 2002. The first four steps are needed to calculate the required rate-of-progress emission reductions, the fifth step is to calculate the fleet turnover corrections, and the last step is to obtain the target level.

#### Step 1. Development of the 1990 Base Year Inventory

The 1990 Base Year Inventory has been fulfilled in Delaware's 1990 Base Year Ozone SIP Emission Inventory (Reference 1). A summary by source sector of the 1990 Base Year Inventory of VOC and NOx emissions in Delaware's two severe nonattainment counties (Kent and New Castle) has been presented in Table 1.

#### Step 2. Development of the 1990 Rate-of-Progress or Baseline Inventory

The 1990 Baseline Inventory is the "baseline" from which Delaware calculates the 9% rate-of-progress emission reductions for the subject 1999-2002 milestone period. This baseline inventory accounts for only anthropogenic emissions from sources within Kent and New Castle Counties. Therefore, this baseline inventory is obtained by removing, from the 1990 Base Year Inventory, (1) biogenic emissions, (2) any emissions from sources outside Kent and New Castle Counties, and (3) the non-reactive perchloroethylene (PERC) emissions (for VOC inventory only). Delaware's 1990 Base Year Inventory for Kent and New Castle Counties (see Table 1) does not include emissions from any outside sources. It does include, however, the biogenic and PERC emissions.

Perchloroethylene was originally classified by EPA as a photochemically reactive VOC for emission inventory purposes. The EPA reclassified PERC as photochemically non-reactive after Delaware's 1990 Base Year Inventory was compiled. Because only the photochemically reactive VOCs participate in the formation of ozone, the PERC emissions, which are now considered not participating in the formation of ozone, need to be subtracted from the 1990 Base Year Inventory. Calculations for the 1990 Baseline Inventory for VOC emissions are shown below.

1990 Base Year Total VOC Emissions (Kent and New Castle Counties Only):

$$65.233 \text{ TPD (Kent)} + 131.296 \text{ TPD (New Castle)} = 196.529 \text{ TPD}$$

Emissions from Outside Nonattainment Area: None

$$1990 \text{ Base Year Total Biogenic VOC Emissions: } 32.460 \text{ TPD (Kent)} + 17.510 \text{ TPD (New Castle)} = 49.970 \text{ TPD}$$

1990 Base Year Total PERC Emissions (See Appendix A): 0.716 TPD

$$1990 \text{ Baseline VOC Emissions} = 1990 \text{ Base Year Inventory} - (\text{Outside Emissions} + \text{Biogenic Emissions} + \text{PERC Emissions}) = 196.529 - (0 + 49.970 + 0.716) = 145.843 \text{ TPD}$$

The 1990 Baseline Inventory for NOx emissions will be the same as the 1990 Base Year Inventory (Table 1), since (1) biogenic NOx emissions are negligible, (2) there are no NOx emissions from outside sources in the 1990 Base Year Inventory, and (3) correction for PERC emissions does not apply to NOx emissions. The 1990 Baseline Inventory for both VOC and NOx emissions is summarized in Table 2.

**Table 2**  
**1990 Baseline Inventory Summary for VOC and NOx Emissions (in TPD)**

Source Sector	Kent		New Castle		Total NA A	
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.242	6.130	26.938	85.767	30.180	91.897

Stationary Area Sources	12.779	1.202	34.366	5.398	47.145	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.07	10.62	35.28	27.06	48.35	37.68
TOTAL EMISSIONS	32.585	25.843	113.258	137.002	145.843	162.845

**Step 3. Development of the 1990 Adjusted Baseline Inventory**

According to Section 182(b)(1)(D) of the CAAA, emission reductions resulted from the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990 are not creditable for achieving the adequate rate-of-progress emission reductions. Therefore, the 1990 Baseline Inventory needs to be adjusted by subtracting the VOC (and NOx) emission reductions that are expected to occur between 1990 and the subject milestone year 2002 due to the FMVCP and RVP regulations. The result of this adjustment is called “the 1990 Adjusted Baseline Inventory relative to 2002”.

The FMVCP/RVP VOC and NOx emission reductions that are expected to occur between 1990 and a subject milestone year are determined using the on-road mobile source emission modeling software (MOBILE5a) provided by EPA. The MOBILE5a input and output files for the 1990 Adjusted Baseline Inventory for on-road mobile sources are provided by Delaware Department of Transportation (DelDOT), through its contractor, Vanasse Hangen Brustlin, Inc., Watertown, MA (hereafter referred to as VHB). These files are included in Appendix B of the 2002 RPP. The calculations and results for the non-creditable FMVCP/RVP emission reductions for the target years of 1999 and 2002 are presented in Table 3.

**Table 3  
Non-Creditable FMVCP/RVP Emission Reductions (in TPD)**

Description	VOC	NOx	
1990 Baseline On-Road Mobile Source Emissions	48.350	37.680	(a)

1990 Adjusted Base Year On-Road Mobile Source Emissions			
Adjusted for 1999	36.850	33.730	(b) <sub>199</sub>
Adjusted for 2002	35.660	33.240	(b) <sub>200</sub>
FMVCP/RVP Emission Reductions			
For 1990-1999	11.500	3.950	(a)-(b) <sub>199</sub>
For 1990-2002	12.690	4.440	(a)-(b) <sub>200</sub>

The 1990 Adjusted Baseline Inventory relative to a subject milestone year is obtained by subtracting the corresponding FMVCP/RVP emission reductions from the 1990 Baseline Inventory presented in Step 2. The calculations and results are shown in Table 4. This all-source adjusted inventory is the baseline for calculating the required rate-of-progress emission reductions, as shown in the next step.

**Step 4 - Calculation of Required Creditable Reductions**

The percent reductions required for VOC and NOx emissions are calculated separately. However, the sum of all creditable VOC and NOx emission reductions must be equal to the 3% per year required reduction. The VOC emission reduction that can be applied for the

**Table 4  
1990 Adjusted Baseline VOC and NOx Emissions (in TPD)**

Description	VOC	NOx	
1990 Baseline Inventory (All-Source Emissions)	145.843	162.845	(a)
FMVCP/RVP Emission Reductions			
For 1990-1999	11.500	3.950	(b) <sub>1999</sub>
For 1990-2002	12.690	4.440	(b) <sub>2002</sub>
1990 Adjusted Baseline Inventory Emissions			
Adjusted for 1999	134.343	158.895	(a)-(b) <sub>1999</sub>

Adjusted for 2002	133.153	158.405	(a)- (b) <sub>2002</sub>
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2002 RPP is obtained by subtracting the sum of non-creditable fleet turnover correction factor and the expected VOC emissions level in 2002 from the 1999 target level of VOC emissions. The expected level of VOC emissions (i.e., the control strategy projection) in 2002 is 101.139 TPD (See Table 15 in Part III), and the fleet turnover correction factor for the 1999-2002 period is 1.190 TPD. Therefore, 7.877 TPD of VOC emission reduction can be utilized for meeting the 1999-2002 rate-of-progress requirements. The calculations and result are summarized in Table 5.

**Table 5**  
**VOC Emission Reductions (in TPD) Creditable for 3% Per Year Rate-of-Progress Requirement for 1999-2002 Period**

Description	Emissions	
1990 Baseline VOC Emission Adjusted for 2002	133.153	(a)
1999 VOC Target Level*	110.206	(b)
VOC Fleet Turnover Correction for 1999-2002	1.190	(c)
2002 VOC Control Strategy Projections	101.139	(d)
Creditable VOC Emission Reductions for 1999-2002	7.877	(e)=(b)-(c)-(d)
% of VOC Reductions for 2002 Rate-of-Progress	5.92%	(f)=(e)/ (a)x100

\* The 1999 target level is obtained from Delaware's 1999 RPP as amended in June 1999 (Reference 7).

The percentage of VOC reduction creditable toward the 3% per year rate of progress is determined from the 1990 Adjusted Base Year Inventory of VOC emissions. The total creditable VOC emission reduction of 7.877 TPD is converted to an equivalent percentage and is found to be 5.92%. The percent NOx reduction that can be substituted to meet the average 3% per year rate-of-progress requirement is obtained from the fact that the sum of creditable VOC and NOx emission reductions must be equal to 9% between 1999 and 2002, which requires a 3.08% for NOx emission reduction. The required NOx emission reduction is then calculated to be 4.879 TPD, as indicated in Table 6.

**Table 6**  
**NOx Emission Reductions (in TPD) Creditable for 3% Per Year Rate-of-Progress Requirement for 1999-2002 Period**

Description	Emissions	
1990 Baseline NOx Emission Adjusted for 2002	158.405	(a)
% VOC Reductions for 2002 Rate-of-Progress	5.92%	(b)
% NOx Reductions for 2002 Rate-of-Progress	3.08%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1999-2002	4.879	(e)=(a)x(c)

In summary, the emission reductions required to meet the average 3% per year rate-of-progress requirement for the 1999-2002 period are 7.877 TPD and 4.879 TPD for VOC and NOx, respectively.

#### **Step 5. Calculation of Corrections for Fleet Turnover**

It is anticipated that there will be some decrease in motor vehicle emissions for many years as a result of fleet turnover, i.e., the gradual replacement of older pre-control vehicles by newer vehicles with the control required by the CAAA, even in the absence of any additional and new controls. The CAAA does not allow States to take credit from these fleet-turnover reductions for achieving rate-of-progress purposes. Therefore, the emission reductions due to any fleet turnover during the post-1996 milestone periods are not creditable for the corresponding milestone year. The fleet turnover correction for each post-1996 target level is obtained by subtracting the 1990 Baseline On-Road Mobile Source Emissions adjusted to the subject milestone year (i.e., 2002) from the 1990 Baseline On-Road Mobile Source Emissions adjusted to the previous milestone year (i.e., 1999). The calculations and results for 2002 are shown in Table 7.

**Table 7**  
**Fleet Turnover Corrections for On-Road Mobile Source VOC and NOx Emissions (TPD)**

Correction (TPD)	VOC	NOx	
------------------	-----	-----	--

For <del>[1999-2002 2002-2005]</del>	<del>[1.190 0.706]</del>	<del>[0.490 0.227]</del>	<del>[(b)1999- (b)2002* (b)2002- (b)2005]</del>
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\* Data are obtained from Table [4-8 3].

**Step 6 - Calculation of 2002 Target Levels of VOC and NOx Emissions**

The target levels of VOC and NOx emissions in 2002 are calculated using Equation (1), i.e., by subtracting the required emission reductions (in step 4) and the fleet turnover corrections (in step 5) from the target levels of the previous milestone year of 1999 (References 6 and 7). The calculations and results are summarized in Table 8.

**Table 8  
Target Levels of VOC and NOx Emissions in 2002 (in TPD)**

Description	VOC	NOx	
1999 Target Level*	110.206	148.964	(a)
Emission Reduction for Rate-of-Progress	7.877	4.879	(b)
Fleet Turnover Correction for 1999-2002	1.190	0.490	(c)
Target Level for 2002	101.139	143.595	(d)=(a)-(b)-(c)

\* The 1999 target levels are obtained from Delaware's 1999 RPP as amended in June 1999 (Reference 7).

The target levels shown in Table 8 are the maximum VOC and NOx emissions to be allowed in 2002, under the requirements of adequate rate-of-progress toward the attainment of the 1-hour ozone standard, for Delaware's two severe nonattainment counties, i.e., Kent and New Castle Counties. Delaware must limit its VOC and NOx emissions in Kent and New Castle Counties to or below these target levels in 2002.

**PART II**

**THE 2002 CURRENT CONTROL PROJECTION INVENTORY AND THE REQUIRED VOC AND NOx EMISSION REDUCTIONS**

In addition to the 15% VOC emissions reductions, plus offsetting emission growth, by the year 1996, Section 182(c)(2) of the Clean Air Act Amendments of 1990 (CAAA) requires each serious and above ozone nonattainment area to achieve 3% per year emissions reductions, net of growth, averaged over each consecutive 3-year period after 1996 until the year of attainment. In other words, the Post-1996 Rate-of-Progress Plan and Attainment Demonstration requires that the nonattainment area not only reduce the VOC emissions from the baseline inventory by 9 percent for each 3-year milestone period, but also offset any growth in emissions due to increased economic activity in each 3-year period. For the period of 1999-2002 in Delaware, the 9% emission reductions from the 1990 Baseline Inventory emission levels include 7.877 TPD of VOC reduction and 4.879 TPD of NOx reduction, as determined in Part I. The Part II of the 2002 RPP sets forth the methodology used in determining the total amount of VOC and NOx emission reductions required for the 1999-2002 period, including the emission reductions that are required to offset emission growth.

In order to determine the total amount of VOC and NOx emission reductions required for the 1999-2002 period, the emission levels in the milestone year 2002 must be estimated. For this purpose, the 2002 growth factors are developed for the various emission source categories, as presented in Section 2.2 of the 2002 RPP. The 1990 baseline emissions are then multiplied by these growth factors, and the resulting inventory is called the 2002 Current Control Projection Inventory. The 2002 Current Control Projection Inventory is an estimation of VOC and NOx emissions that will occur in 2002, if no new emission control measures are implemented between 1990 and 2002. The difference between the 2002 Current Control Projection Inventory and the 2002 Target Level of Emissions (discussed in Part I of this plan), is the total amount of emissions that Delaware must plan to reduce in order to meet the 9 percent VOC reduction requirement for the 1999-2002 period. This part of the 2002 RPP contains a detailed discussion of how the total VOC and NOx emission reductions are determined.

**2.1 The 2002 Current Control Projection Inventory Summary**

The 2002 Current Control Projection Inventory of VOC and NOx emissions for Kent and New Castle Counties is summarized in Tables 9 for VOC and Table 10 for NOx. Also included in these tables, for comparison purposes, are the 1990 Baseline Inventory emissions from individual source sectors. The 1990 data presented in Tables 9 and 10

are obtained from Table 2. The Current Control Projection and Baseline VOC and NOx emission data are shown graphically in Figures 4 and 5, respectively. Figure 6 shows the relative proportions of VOC and NOx emissions for each source sector in the 2002 Current Control Projection Inventory for the entire severe nonattainment area (NAA) in Delaware. Figures 7 and 8 respectively show the 2002 Current Control Projection Inventory VOC and NOx emissions by county.

The point, stationary area, and off-road mobile source portions of the 2002 Current Control Projection Inventory are essentially created by multiplying 1990 Baseline Inventory emission levels by the appropriate growth factors. The on-road mobile source emissions are projected by multiplying emission factors generated from the MOBILE5a software by the projected 2002 vehicle miles traveled (VMT), as explained in Section 2.3 in the 2002 RPP.

	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	6.130	6.989	85.767	94.840	91.897	101.829
Stationary Area	1.202	1.347	5.398	6.036	6.600	7.383
Off-Road Mobile	7.891	9.024	18.777	21.175	26.668	30.199
On-Road Mobile	10.620	13.180	27.060	34.290	37.680	47.470
Total Emissions	25.843	30.540	137.002	156.341	162.845	186.881

\* 1990 Baseline Inventory data are obtained from Table 2.

**Table 9**  
Summary of VOC Emissions in 2002 Current Control Projection Inventory (in TPD)

Source Sector	Kent County		New Castle		Total NAA	
	1990*	2002	1990*	2002	1990*	2002
	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	3.242	3.361	26.938	27.914	30.180	31.275
Stationary Area	12.779	13.762	34.366	37.227	47.145	50.989
Off-Road Mobile	3.494	4.093	16.674	18.170	20.168	22.263
On-Road Mobile	13.070	16.500	35.280	44.250	48.350	60.750
Total Emissions	32.585	37.716	113.258	127.561	145.843	165.277

\* 1990 Baseline Inventory data are obtained from Table 2.

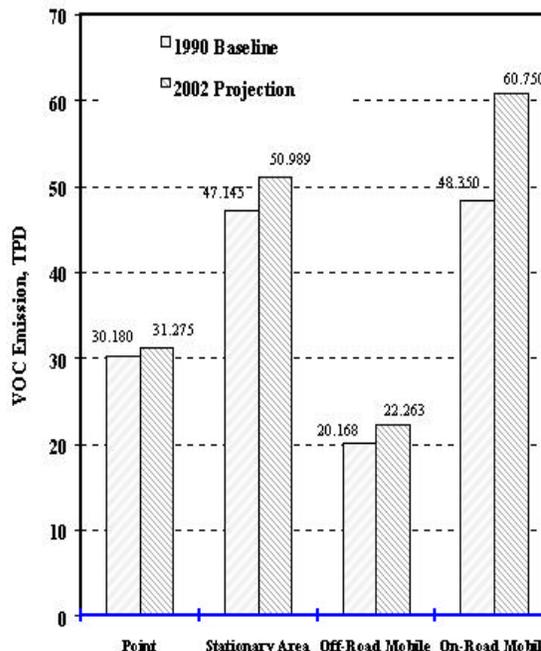


Figure 4. Comparison of VOC Emissions in 2002 Current Control Projection Inventory And 1990 Baseline Inventory

**Table 10**  
Summary of NOx Emissions in 2002 Current Control Projection Inventory (in TPD)

Source Sector	Kent County		New Castle		Total NAA	
	1990*	2002	1990*	2002	1990*	2002

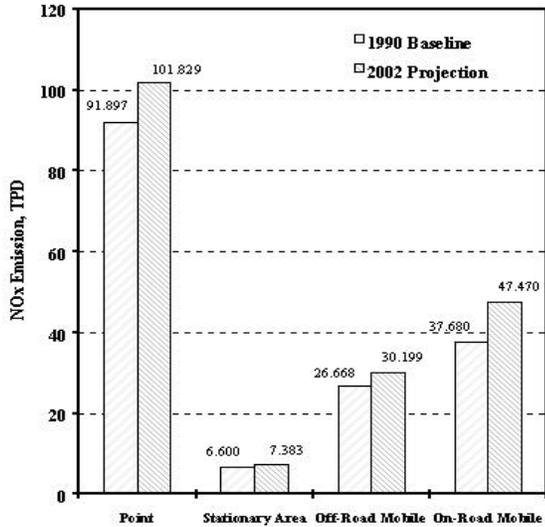


Figure 5. Comparison of NOx Emissions in 2002 Current Control Projection Inventory And 1990 Baseline Inventory

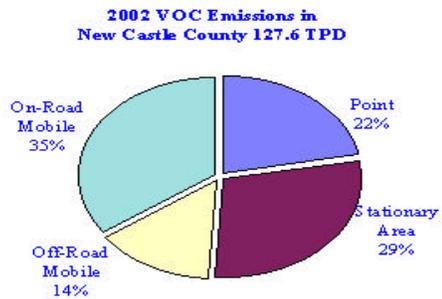
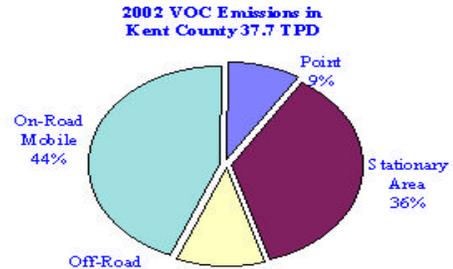


Figure 7. Total 2002 Current Control Projection Inventory VOC Emissions By County and Source Sector

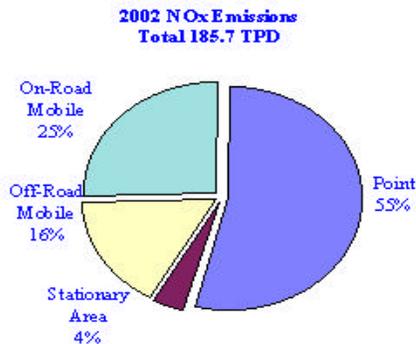
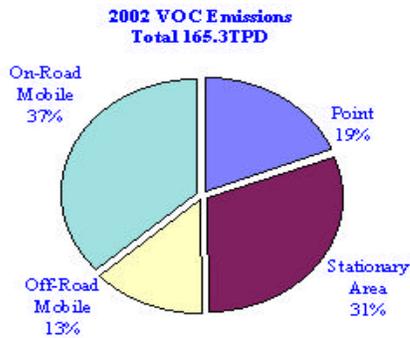


Figure 6. Total 2002 Current Control Projection Inventory VOC and NOx Emissions By Source Sector

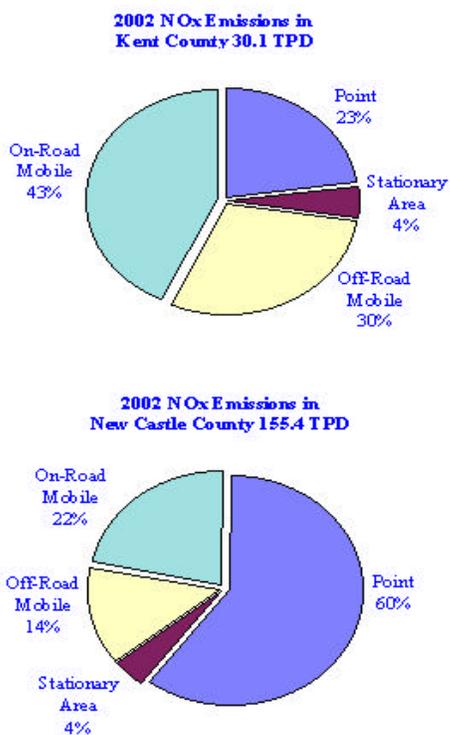


Figure 8. Total 2002 Current Control Projection Inventory NOx Emissions By County and Source Sector

**2.2 Calculation of Total Required VOC and NOx Emissions Reductions**

According to the rate-of-progress provisions in the CAAA, Delaware’s 2002 RPP for the severe nonattainment area (i.e., Kent and New Castle Counties) is required not only to achieve a 9% of the 1990 baseline from the 1999 targets, but also to offset any growth in emissions between 1999 and 2002. In other words, the total emission reductions for meeting the adequate rate of progress consist of two components: (1) any growth in emissions occurring between 1999 and 2002 that must be offset, plus (2) the average 3% per year emission reductions for the 1999-2002 period.

**2.2.1. Determination of Growth in Emissions for the 1999-2002 Period**

The growth in emissions for the 1999-2002 period can be obtained from the current control projections of 1999 and 2002. The 2002 current control projections for VOC and NOx emissions are presented in Tables 9 and 10, respectively. The 1999 current control projection inventories of VOC and NOx emissions can be obtained from

Delaware’s 1999 Rate-of-Progress Plan, as amended in June 1999 (References 6 and 7). For comparison purpose, the 1999 Current Control Projection Inventories are summarized in Tables 11 and 12 for VOC and NOx emissions, respectively.

**Table 11 Summary of 1999 Current Control Projection Inventory VOC Emissions (in TPD)**

Source Sector	Kent County		New Castle County		Total NAA	
	1990 VOC	1999 VOC	1990 VOC	1999 VOC	1990 VOC	1999 VOC
	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	3.242	3.267	26.938	27.194	30.180	30.461
Stationary Area	12.779	13.473	34.366	36.482	47.145	49.955
Off-Road Mobile	3.494	3.923	16.674	17.699	20.168	21.622
On-Road Mobile	13.070	15.460	35.280	42.240	48.350	57.700
Total Emissions	32.585	36.123	113.258	123.615	145.843	159.738

**Table 12 Summary of 1999 Current Control Projection Inventory NOx Emissions (in TPD)**

Source Sector	Kent County		New Castle County		Total NAA	
	1990 NOx	1999 NOx	1990 NOx	1999 NOx	1990 NOx	1999 NOx
	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	6.130	6.538	85.767	96.693	91.897	103.231
Stationary Area	1.202	1.311	5.398	5.893	6.600	7.204
Off-Road Mobile	7.891	8.555	18.777	19.919	26.668	28.474
On-Road Mobile	10.620	12.570	27.060	32.580	37.680	45.150
Total Emissions	25.843	28.974	137.002	155.085	162.845	184.059

The growth in emissions is determined by subtracting the 1999 current control projections from the 2002 current control projections. A summary of the growths in VOC and

NOx emissions for the 1999-2002 period is presented in Table 13. As indicated in Table 13, a growth of 5.539 TPD in VOC emissions and a growth of 2.822 TPD in NOx emissions for the 1999-2002 period must be offset in Delaware's nonattainment area.

**Table 13**  
**Summary of Emission Growths between 1999 and 2002**  
**(in TPD)**

Source Sector	Growth in VOC Emissions			Growth in NOx Emissions*		
	Kent	New Castle	Total NAA	Kent	New Castle	Total NAA
Point	0.094	0.720	0.814	0.451	-1.853	-1.402
Stationary Area	0.289	0.745	1.034	0.036	0.143	0.179
Off-Road Mobile	0.170	0.471	0.641	0.469	1.256	1.725
On-Road Mobile	1.040	2.010	3.050	0.610	1.710	2.320
Total Emissions	1.593	3.946	5.539	1.566	1.256	2.822

\*The minus sign (-) indicates decline instead of growth.

### 2.2.2. Determination of VOC and NOx Emission Reductions for the 1999-2002 Period

In its 1999 Rate-of-Progress Plan, as amended in June 1999 (Reference 7), Delaware has determined its 1999 emission target levels of 110.206 TPD for VOC and 148.964 TPD for NOx. In Part I of this 2002 RPP, it has been determined that the total nonattainment area (i.e., Kent and New Castle Counties) have to meet a target level of 101.139 TPD for VOC emissions and a target level of 143.595 TPD for NOx emissions. The VOC and NOx emission reductions required to meet the 2002 target levels can be determined as follows:

$$\begin{aligned} \text{VOC Reduction Without Growth} &= 1999 \text{ Target Level} - \\ &\quad 2002 \text{ Target Level} \\ &= 110.206 - 101.139 \\ &= 9.067 \text{ TPD} \end{aligned}$$

Total VOC Reduction Required beyond the 1999 RPP Target Level

$$\begin{aligned} &= \text{Emission Growth} + \text{Reduction Without Growth} \\ &= 5.539 + 9.067 = 14.606 \text{ TPD} \end{aligned}$$

The total VOC emission reductions of 14.606 TPD, besides the 159.738 - 110.206 = 49.532 TPD of VOC emission reductions required in the previous RPPs, is the additional VOC emission reduction needed to meet the 2002 target level of VOC emissions. In other words, Delaware's 2002 RPP for Kent and New Castle Counties must show a total reduction of 49.532 + 14.606 = 64.138 TPD in VOC emissions from the 2002 Current Control Projections. The same reduction can be calculated by taking the difference of the 2002 Current Control Projection and 2002 Target Level of VOC emissions, as shown below:

$$\begin{aligned} \text{Required VOC Reduction for 1990-2002 Period} &= 2002 \text{ Current Control Projection} \\ &\quad - 2002 \text{ Target Level} \\ &= 165.277 - 101.139 = 64.138 \text{ TPD} \end{aligned}$$

The required NOx emission reductions can be determined using similar procedures:

$$\begin{aligned} \text{NOx Reduction Without Growth} &= 1999 \text{ Target Level} - \\ &\quad 2002 \text{ Target Level} \\ &= 148.964 - 143.595 \\ &= 5.369 \text{ TPD} \end{aligned}$$

Total Required NOx Reduction beyond 1999 RPP Target Level

$$\begin{aligned} &= \text{Emission Growth} + \text{Reduction Without Growth} \\ &= 2.822 + 5.369 = 8.191 \text{ TPD} \end{aligned}$$

The total NOx emission reductions of 8.191 TPD, besides the 184.059 - 148.964 = 35.095 TPD reductions to satisfy the 1999 RPP requirements, is the additional NOx reductions needed to meet the 2002 target level of NOx emissions. In other words, the total nonattainment area of Kent and New Castle Counties must show a total NOx emission reduction of 35.095 + 8.191 = 43.286 TPD from the 2002 Current Control Projection of VOC emissions. The same reduction can be obtained by taking the difference of the 2002 Current Control Projection and 2002 Target Level of NOx emissions as shown below:

$$\begin{aligned} \text{Required NOx Reduction for 1990-2002 Period} &= 2002 \text{ Current Control Projection} - 2002 \text{ Target Level} \\ &= 186.881 - 143.595 = 43.286 \text{ TPD} \end{aligned}$$

A summary of the required VOC and NOx emission

reductions is presented in Table 14. These required reductions form the basis on which Delaware develops its emission control strategies in this rate-of-progress plan.

**Table 14**  
**VOC and NO<sub>x</sub> Emission Reductions Required in the 2002 RPP (in TPD)**

VOC Emissions			NO <sub>x</sub> Emissions		
Target	Current Control	Required	Target	Current Control	Required
Level	Projection	Reduction	Level	Projection	Reduction
101.139	165.277	64.138	143.595	186.881	43.286

### PART III

#### THE 2002 CONTROL STRATEGY PROJECTION INVENTORY AND EMISSION CONTROL MEASURES

In Part I, Delaware has determined its VOC and NO<sub>x</sub> emission targets in the milestone year of 2002 to meet the average 3% per year rate-of-progress requirement, plus offsetting the emission growth. In Part II, Delaware has determined that, in order to meet those emission targets, a 64.138 TPD VOC emission reduction and a 43.286 TPD emission reduction must be achieved in this 2002 Rate-of-Progress Plan for Kent and New Castle Counties. These emission reductions will be accomplished by implementation of VOC emission control measures proposed in the 15% RPP, VOC and NO<sub>x</sub> emission controls in the 1999 RPP and additional national, regional and state control measures necessary for further VOC and NO<sub>x</sub> emission reductions. In order to show that the reductions associated with these control measures are adequate to meet the 2002 VOC and NO<sub>x</sub> emission targets, the 1990 Baseline emissions are projected to 2002 including the effects of both growth and the new control measures. The resulting inventory is called the 2002 Control Strategy Projection Inventory. The total VOC and NO<sub>x</sub> emissions in the 2002 Control Strategy Projection Inventory must be equal to or less than the 2002 target levels of VOC and NO<sub>x</sub> emissions in order to show that the control measures are adequate for fulfilling the rate-of-progress requirements of VOC and NO<sub>x</sub> emission reductions.

The 2002 target levels of VOC and NO<sub>x</sub> emissions have been calculated in Part I to be 101.139 TPD and 143.595 TPD, respectively. Part III of the 2002 RPP discusses the

1999 Control Strategy Projection Inventory, the control measures that Delaware will implement to meet the average 3% per year rate-of-progress requirement for the 1999-2002 period, the sources affected by these control measures, and the expected reductions from each control measure.

#### 3.1 The 2002 Control Strategy Projection Inventory Summary

The 2002 Control Strategy Projection Inventory is summarized in Tables 15 and 16 for VOC and NO<sub>x</sub> emissions, respectively. As shown in Tables 15 and 16, the total 2002 Control Strategy Projections for VOC and NO<sub>x</sub> emissions are 101.139 TPD and 142.077 TPD, respectively, in the peak ozone season. The 2002 Control Strategy Projection of VOC emissions is the same as the target level, and the total 2002 Control Strategy Projection of NO<sub>x</sub> emissions is less than the required target level of 143.595 TPD. Therefore, the control measures that are included in the 2002 RPP are considered to be adequate for meeting the average 3% per year rate-of-progress requirement, plus offsetting the emission growth for the 1999-2002 period.

Figure 9 shows a graphic comparison by source sector of the 1990 Baseline Inventory (from Part I), the 2002 Current Control Projections (from Part II), and the 2002 Control Strategy Projections (from Table 15) for VOC emissions. Figure 10 shows the relative proportions of the 2002 Control Strategy Projections of VOC emissions from each source sector for the entire nonattainment area. Figure 11 shows the relative proportions of the 2002 Control Strategy Projections of VOC emissions by county.

**Table 15**  
**Summary of 2002 Control Strategy Projection Inventory VOC Emissions (in TPD)**

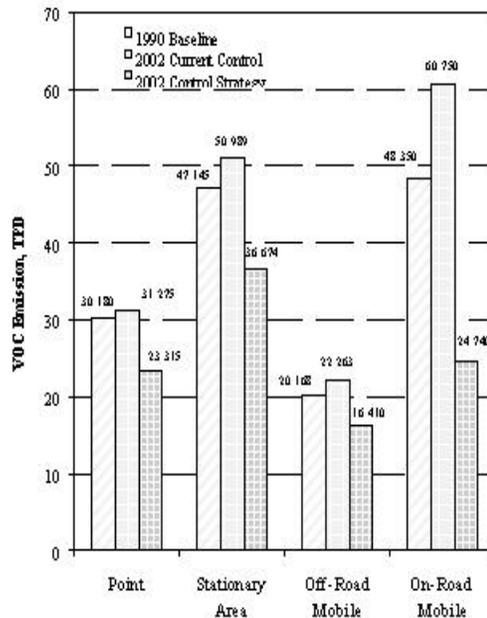
Source Sector	Kent County	New Castle County	Total NAA
Point	1.392	21.923	23.315
Stationary Area	9.981	26.693	36.674
Off-Road Mobile	2.864	13.546	16.410
On-Road Mobile	6.300	18.440	24.740
Total Emissions	20.537	80.602	101.139

**Table 16**  
**Summary of 2002 Control Strategy Projection Inventory**  
**NOx Emissions (in TPD)**

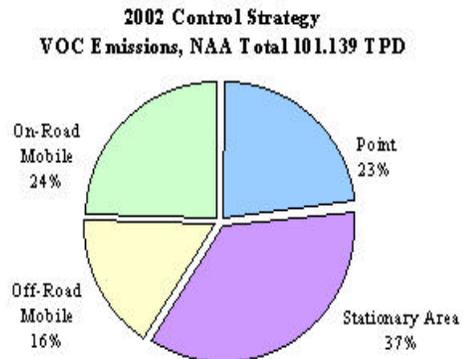
Source Sector	Kent	New Castle	Total NAA
Point	5.040	67.252	72.292
Stationary Area	0.985	4.839	5.824
Off-Road Mobile	8.175	18.686	26.861
On-Road Mobile	9.810	27.290	37.100
Total Emissions	24.010	118.067	142.077

Figure 11 shows a graphic comparison by source sector of the 1990 Baseline Inventory (from Part I), the 2002 Current Control Projections (from Part II), and the 2002 Control Strategy Projections (from Table 16) for NOx emissions. Figure 12 shows the relative proportions of the 2002 Control Strategy Projections of NOx emissions from each source sector for the entire nonattainment area. Figure 13 shows the relative proportions of the 2002 Control Strategy Projections of NOx emissions by county.

The 2002 Control Strategy Projections for point sources, stationary area sources, and off-road mobile sources are calculated primarily using the projection equations provided in the Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans, EPA-452/R-93-002, Office of Air Quality Planning and Standards, US EPA, March 1993 (Reference 13, hereafter referred to as the Guidance for Growth/Projections/Strategies). Other equations are also used for some specific cases. These equations are either obtained from other EPA guidance documents or derived from emission-related data provided by EPA. The control strategy projections of the on-road mobile sources are developed using EPA's MOBILE5a software in accordance with Procedures for Preparing Emissions Projections, EPA-450/4-91-019, Office of Air Quality Planning and Standards, US EPA, July 1991 (Reference 12, hereafter referred to as Procedures for Emission Projections).



**Figure 9. Comparison of VOC Emissions in 1990 Baseline, 2002 Current Control And 2002 Control Strategy Projection Inventories**



**Figure 10. Contribution of Each Source Sector to Total 2002 VOC Control Strategy Projection in Delaware's Nonattainment Area (NAA)**

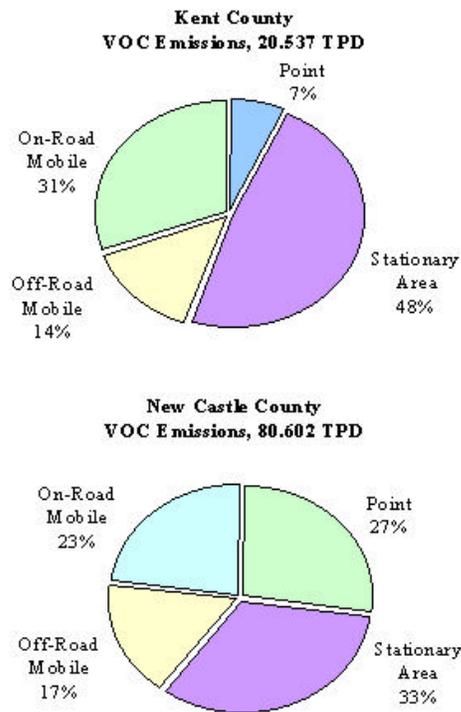


Figure 11. Contribution of Each Source Sector to 2002 VOC Control Strategy Projection in Each Nonattainment County.

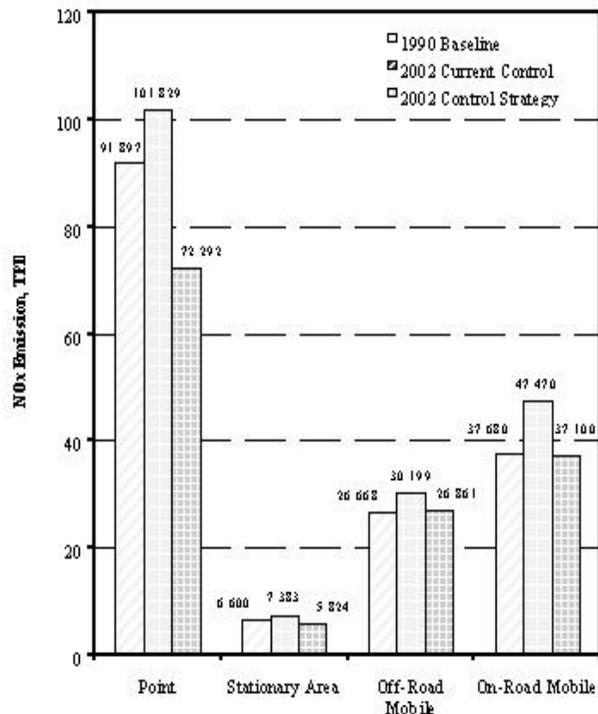


Figure 12. Comparison of NOx Emissions in 1990 Baseline, 2002 Current Control And 2002 Control Strategy Projection Inventories

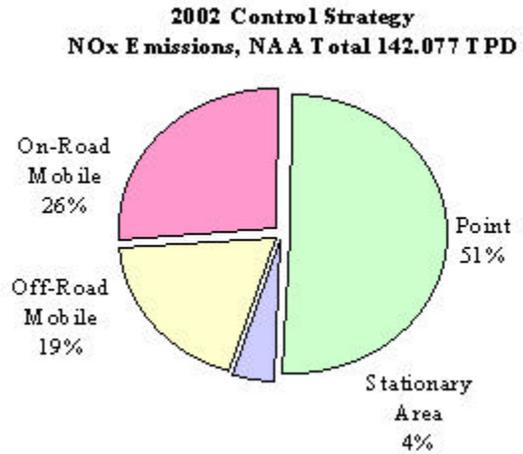
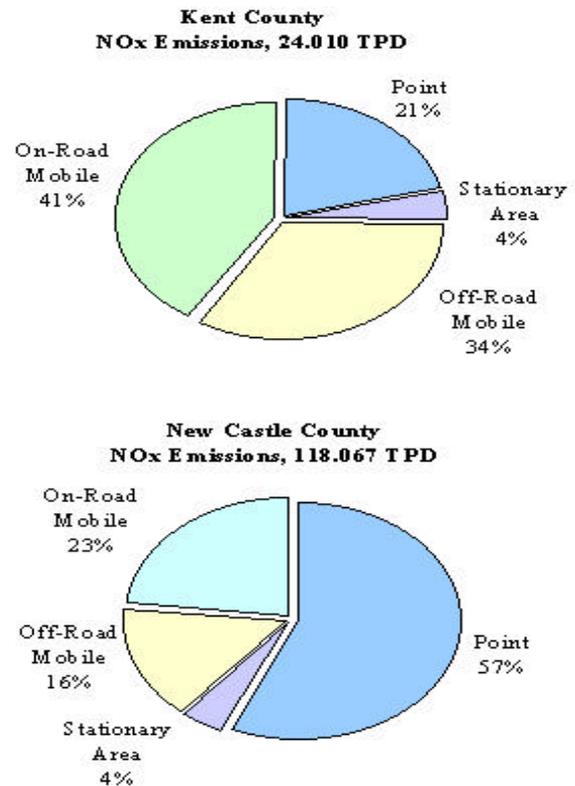


Figure 13. Contribution of Each Source Sector to Total 2002 Control Strategy Projection NOx Emissions in Delaware's Nonattainment Area (NAA).



**Figure 14. Contribution of Each Source Sector to 2002 Control Strategy Projection NOx Emissions in Each Nonattainment County.**

**3.2 Point Source 2002 Control Strategy Projection Methodology**

Emissions from point sources are projected on a source-specific (process-by-process) basis in accordance with the Guidance for Growth/Projections/Strategies (Reference 13). In this guidance document and its following memoranda for amendments and corrections, EPA provides methods and projection equations for estimating future year emissions from individual point sources. Selection of method or equation to be used to project emissions from a point source is dependent on whether or not the source will have new controls by the milestone year of 2002.

**A. Method 1**

The VOC and NOx emissions for point sources that will have new controls by 2002 are projected at allowable emissions rates using the point source projection equations from Section 6.4 of the Guidance for Growth/Projections/Strategies. These same equations have been used to determine the 2002 Current Control Projections in Part II of this Plan. However, the projection data used for the 2002 Control Strategy Projections differ from those used for the 2002 Current Control Projections. For the control strategy projections, the controlled emissions factors, process control efficiencies (CE), controlled emissions rates, and rule effectiveness (RE) values for the processes with new controls by 2002 are used to reflect the controls that will be in place in 2002. For the current control projections in Part II, all parameters are related to controls, if any, that were in place in 1990.

For sources that will have new controls by 2002, the Control Strategy Projections are determined using one of the following five projection equations (Reference 13):

$$EMIS_{py} = ORATE \times EMF_{py,pc} \times \left[ 1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \right] \times GF_{py} \tag{P-1}$$

$$EMIS_{py} = ORATE \times EMF_{py} \times \frac{200 - RE_{py}}{100} \times GF_{py} \tag{P-2}$$

$$EMIS_{py} = CRTPOL \times \frac{1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100}}{1 - \frac{CEQEFF}{100} \times \frac{RULEFF}{100}} \times GF_{py} \tag{P-3}$$

$$EMIS_{py} = CRTPOL \times \frac{\frac{200 - RE_{py}}{100}}{100 - RULEFF} \times \frac{EMF_{py}}{EMF_{by}} \times GF_{py} \tag{P-4}$$

$$EMIS_{py} = ER_{py} \times \frac{CRTPOL}{EMIS_{bya}} \times \frac{200 - RE_{py}}{100} \tag{P-5}$$

where:

- EMIS<sub>py</sub> = Projection Year Emissions (Tons per Peak Ozone Season Day);
- ORATE = 1990 Base Year Ozone Season Operating Rate (Production Units/Day);
- EMF<sub>py,pc</sub> = Projection Year Pre-control Emissions Factor (Mass of Pollutant/Production Unit);
- CE<sub>py</sub> = Projection Year Control Efficiency (Percent);
- RE<sub>py</sub> = Projection Year Rule Effectiveness (Percent);
- GF<sub>py</sub> = Projection Year Growth Factor (Dimensionless);
- EMF<sub>py</sub> = Projection Year Post-control Emissions Factor (Mass of Pollutant/Production Unit);
- CRTPOL = 1990 Baseline Ozone Season Actual Emissions (Tons Per Peak Ozone Season Day);
- CEQEFF = 1990 Base Year Control Efficiency (Percent);
- RULEFF = 1990 Base Year Rule Effectiveness (Percent);
- EMF<sub>by</sub> = 1990 Base Year Emissions Factor ;
- ER<sub>py</sub> = Projection Year Annual Emissions Cap (Mass of Pollutant/Year);
- EMIS<sub>bya</sub> = 1990 Base Year Annual Emissions (Tons Per Year).

Depending on the method that is used to estimate the 1990 Baseline emissions and the type of projection year control data available, one of these five equations is used to project emissions from each process that will have new controls by 2002. Equation P-1 is used when the 1990 baseline emissions are calculated using a pre-control emission factor, and a control efficiency is used to factor the control measure into the emissions estimation. Equation P-2 is used when emissions are calculated using a post-control

emissions factor; that is, the emissions factor accounts for the affect of the control measure on emissions. Equation P-3 is used when 1990 baseline emissions are calculated by material balance or test data, and a control efficiency is used to factor the control measure into the emissions estimation. Equation P-4 is used when 1990 baseline emissions are calculated by material balance or test data, and the control level is represented by an emissions factor rather than by a control efficiency. Equation P-5 is used when permit limits or emission caps are used to represent the effect of the control measures on emissions. This equation is originally presented in the aforementioned EPA's document and recently amended by EPA in a guidance memorandum<sup>1</sup>. According to this memorandum, the term  $ER_{py}$  can be an emission cap on other than an annual basis, and then the term  $EMIS_{bya}$  should be modified to reflect the same time period.

Delaware has compiled the 2002 control data for point sources from Federal and State regulations and air emissions permits that have been issued in the post-1990 time frame. The required emission and control data are inserted into the appropriate projection equation for each process. Wherever applicable, a default RE value of 80% for the projection year is used, as suggested by EPA (Reference 14). The calculation results from these equations, which include the effects of both emission growth and new controls, are the 2002 Control Strategy Projections of emissions from individual processes.

The following is an example of control strategy projection calculation for a point source process that will have new controls by 2002.

#### Example Point Source Emission Projection Calculation:

The Delaware Regulations Governing Solid Waste have been revised in 1990 to include requirements for installation of gas control systems at all sanitary landfills. Control efficiencies for each affected landfill are determined based on design data for the proposed gas control systems. For the Cherry Island facility located in New Castle County, a control device efficiency (flare efficiency) of 98% and a

capture efficiency of 51.49% are used to project the VOC emissions. The overall control efficiency for the Cherry Island landfill is:

$$\text{Overall Control Efficiency } CE_{2002} = 0.98 \times 51.49 = 50.46\%$$

Other projection data for the Cherry Island landfill are:

CRTPOL = 0.268 TPD in the peak ozone season;

$RE_{2002} = 80\%$ ;

CEQEFF = 0%;

RULEFF = 0%;

$GF_{2002} = 1.09$ .

Using Equation P-3, the 2002 projected VOC emissions value for the Cherry Island landfill with the addition of new controls can be calculated as:

$$EMIS_{2002} = 0.268 \times \frac{1 - \frac{50.46}{100} \times \frac{80}{100}}{1 - \frac{0}{100} \times \frac{0}{100}} \times 1.09 = 0.174 \text{ TPD}$$

#### B. Method 2

All sources that will not have new controls by 2002 are projected by multiplying their 1990 baseline emissions with the appropriate growth factors, that is,

$$EMIS_{py} = CRTPOL \times GF_{py} \quad (P-6)$$

Therefore, for sources that will not have new controls by 2002, the 2002 Control Strategy Projection emissions are equal to the 2002 Current Control Projection emissions that are determined in Part II of the 2002 RPP.

A summary of the 2002 Control Strategy Projections for point source emissions is presented in Table 17.

**Table 17**  
**2002 Control Strategy Projections for Point Source Emissions (in TPD)**

Source	Category Name	Kent		New Castle	
		VOC	NOx	VOC	NOx
16	Construction	0.060	0.078	0.022	0.028

1. Memorandum: Correction Errata to 15 Percent Rate of Progress Guidance Document. G.T. Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, March 17, 1999. The memorandum is included in Appendix I.

20	Food Manufacturing	0.030	0.060	0.000	0.000
22	Textiles	0.000	0.000	0.883	0.087
25	Furniture and Fixtures	0.502	0.010	0.000	0.000
26	Paper Manufacturing	0.030	0.085	0.260	0.146
28	Chemicals & Allied Products	0.197	0.055	6.313	3.653
2911	Petroleum Refining	0.000	0.000	4.337	47.714
2951	Asphalt Paving Mixtures	0.000	0.000	0.022	0.028
30	Rubber/Plastic Manufacturing	0.000	0.000	0.974	0.003
33	Primary Metal Industry	0.047	0.000	0.000	0.000
34	Fabricated Metal Products	0.000	0.000	0.077	0.000
37	Transportation Equipment	0.000	0.000	7.014	0.653
38	Measr./Analyze/Control Instrumentation	0.053	0.000	0.000	0.000
42	Motor Freight Transportation	0.000	0.000	0.031	0.015
46	Pipelines	0.002	0.000	0.000	0.000
4911	Electric Utilities & Generators	0.046	4.660	0.226	14.026
4952	POTWs	0.217	0.000	1.322	0.000
4953	Landfills	0.027	0.000	0.182	0.000
80	Health Services	0.000	0.000	0.010	0.130
82	Educational Services	0.000	0.000	0.000	0.024
87	Engineering, Research	0.000	0.000	0.198	0.744
97	Federal, Civilian Government	0.181	0.092	0.051	0.000
Total Emissions by County		1.392	5.040	21.923	67.252
Total State NAA Emissions		VOC: 23.315	NOx: 72.292		

### 3.3 Stationary Area and Off-Road Mobile Source 2002 Control Strategy Projection Methodology

Stationary area and off-road mobile source emissions are projected according to the Guidance for Growth/Projections/Strategies (Reference 13). The projection method for stationary area and off-road mobile sources is dependent on whether or not sources will be subject to new controls by 2002. Stationary area and off-road mobile sources that will not be subject to new controls by 2002 are projected using the following equation:

$$EMIS_{py} = CRTPOL \times GF_{py} \quad (A-1)$$

where  $EMIS_{py}$  = emission in projection year (TPD in Peak Ozone Season);

$CRTPOL$  = 1990 baseline actual emission (TPD in Peak Ozone Season);

$GF_{py}$  = growth factor for projection year (dimensionless).

For stationary area and off-road mobile sources that are subject to new controls by 2002, the 2002 Control Strategy Projections are determined in a manner similar to the point source 2002 Control Strategy Projections, using projection equations from the Guidance for Growth/Projections/Strategies. The main difference between the point source projections and the stationary area and off-road mobile source projections is that point source emissions are projected on a process-by-process basis as described previously, while stationary area and off-road mobile source emissions are projected on a category-wide basis. Therefore, the 2002 Control Strategy Projection Inventory for stationary area and off-road mobile sources is determined using category-wide activity level data versus the process operating data that is used for point source projections.

The stationary area and off-road mobile source projection data reflects 2002 controls and rule effectiveness values. A rule penetration value is also factored into the emissions projection. Rule penetration factors are used in conjunction with rule effectiveness (as defined in Part II of this Plan) to adjust regulated stationary area source emissions estimates. Rule penetration is the portion of an area source category that is affected by a regulation. If a regulation applies to only a certain percentage of sources within a source category, a rule penetration factor is applied to ensure that the control efficiency and rule effectiveness adjustment affect only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category.

#### 1. Stationary Area Sources

In general, stationary area sources that will be subject to new controls by 2002 are projected using the following equation:

$$EMIS_{py} = ACTLEV \times EMF_{py} \times GF_{py} \times \left[ N - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \right] \quad (A-2)$$

- where  $EMIS_{py}$  = emissions in projection year (TPD in Peak Ozone Season);
- $ACTLEV$  = 1990 baseline activity level (activity units per day in Peak Ozone Season);
- $EMF_{py}$  = projection year emissions factor (mass of pollutant per activity unit);
- $GF_{py}$  = projection year growth factor (dimensionless);
- $CE_{py}$  = projection year control efficiency (percent);
- $RE_{py}$  = projection year rule effectiveness (percent);
- $RP_{py}$  = projection year rule penetration (Percent);
- $N$  = 1 if the future control is accounted for the CE factor, or
- = 2 if the future control is accounted for the EMF factor, and in which case, CE should be set equal to 100% (see EPA's memorandum on March 17, 1999, included in Appendix H).

This equation is originally presented in the aforementioned EPA's document and recently amended by EPA in a guidance memorandum (See footnote 12 on page 37). In cases where the emission factor in a projection year ( $EMF_{py}$ ) is equal to the 1990 baseline emission factor ( $EMF_{by}$ ), the corresponding 1990 baseline emission (CRTPOL) can be used in Eq. (A-2) to replace the 1990 baseline activity level ( $ACTLEV$ ) and the projection year emissions factor ( $EMF_{py}$ ). This is because when  $EMF_{py} = EMF_{by}$ , CRTPOL is equal to  $ACTLEV$  times  $EMF_{py}$  in Eq. (A-2). Then, Eq. (A-2) becomes

$$EMIS_{py} = CRTPOL \times GF_{py} \times \left[ 1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \right] \quad (A-2b)$$

For gasoline dispensing facilities that will be subject to the Stage II vapor recovery controls, the projection equation differs slightly due to the nature of the projection year emission factor for Stage II vapor recovery. The projection year emission factor for Stage II Vapor Recovery is produced by modeling using EPA's MOBILE5a software on the basis

of the state-specific motor vehicle input parameters. This emissions factor has already included the effects of the control efficiency, rule effectiveness, and rule penetration in the projection year. Therefore, the term

$$\frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \text{ in Eq. (A-2)}$$

in Eq. (A-2) is not required for emission projections for those sources with the Stage II Vapor Recovery controls. Thus, for projecting emissions from sources affected by Stage II Vapor Recovery, Eq.(A-2) becomes:

$$EMIS_{py} = ACTLEV \times EMF_{py} \times CF \times GF_{py} \quad (A-3)$$

- where  $EMIS_{py}$  = emission in projection year (TPD in Peak Ozone Season);
- $ACTLEV$  = 1990 baseline activity level (gallons gasoline per day in Peak Ozone Season);
- $EMF_{py}$  = emissions factor in projection year from MOBILE5a (grams VOC per gallon gasoline);
- $CF$  = Conversion Factor (grams/gallon to tons/gallon);
- $GF_{py}$  = Growth Factor for projection year.

The following is a calculation example of 2002 Control Strategy Projection for a stationary area source category that will have new controls by 2002.

#### Example of Projection Calculation for Stationary Area Source

Section 34 of Delaware Air Regulation 24 prohibits the manufacture, mixing, storage, use, and application of cutback asphalt during the ozone season. The 2002 projected VOC emissions from cutback asphalt for Kent County can be determined using stationary area source projection Eq. (A-2) (or A-2b). The projection data for cutback asphalt emissions in Kent County are:

- $ACTLEV$  = 45 tons asphalt/yr or 0.173 tons asphalt/day in Peak Ozone Season;
- $EMF_{2002} = EMF_{1990} = 420$  lbs VOC/ton asphalt;
- $CE_{2002} = 100\%$ ;

RE<sub>2002</sub> = 80%;  
 RP<sub>2002</sub> = 100%;  
 GF<sub>2002</sub> = 0.90.

The control efficiency and rule penetration are determined to be 100% from Section 34 of Regulation 24. The EPA's default 80% value is used for the projection year rule effectiveness. Using Equation A-2, the projected VOC emission is:

A summary of the 2002 Control Strategy Projections for

$$EMIS_{2002} = 0.173 \times 420 \times 0.90 \times \left[ 1 - \frac{100}{100} \times \frac{80}{100} \times \frac{100}{100} \right] \times \frac{1 \text{ ton}}{2000 \text{ lbs}} = 0.007 \text{ TPD}$$

stationary area source emissions is presented in Table 18.

## 2. Off-Road Mobile Sources - Using Reformulated Gasoline

Using reformulated fuel is one of the control measures that will affect off-road mobile source emissions by 2002. Emissions from off-road mobile sources that will be affected by reformulated fuel are projected using information provided in a memorandum entitled VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase 1 Reformulated Gasoline, dated August 18, 1993, from Phil Lorang, Director, Emission Planning and Strategies Division, Office of Mobile Sources, U.S. Environmental Protection Agency, Ann Arbor, Michigan (included in Appendix K). According to the memorandum, reformulated fuel will affect the exhaust and evaporative VOC emission components of the 2-stroke and 4-stroke engine categories. For Delaware, 86.51% of the VOC emissions from 2-stroke and 4-stroke engines is exhaust and 5.58% is evaporative. The remaining 7.91% of the VOC emissions from 2-stroke and 4-stroke engines is not significantly affected by reformulated fuel. The VOC emissions reduction is estimated to be 3.3% of the exhaust emissions and 3.5% of the evaporative emissions. Therefore, VOC emissions from 2-stroke and 4-stroke engines were projected using the following equation:

$$EMIS_{py} = CRTPOL \times GF_{py} \times [86.51\% \times (1 - 3.3\%) + 5.58\% \times (1 - 3.5\%) + 7.91\%] \quad (A-4)$$

$$= CRTPOL \times GF_{py} \times 0.9695$$

where

EMIS<sub>py</sub> = emission in projection year (TPD in Peak Ozone Season);  
 GF<sub>py</sub> = growth factor for projection year;  
 CRTPOL = 1990 baseline emissions (TPD in Peak Ozone Season).

**Table 18**  
**2002 Control Strategy Projections for Stationary Area Source Emissions (in TPD)**

Source SCC	Category Name	Kent		New Castle	
		VOC	NOx	VOC	NOx
2102	Industrial Fuel Consumption	0.007	0.489	0.036	2.880
2103	Commercial/Inst. Fuel Consumption	0.007	0.176	0.033	0.812
2104	Residential Fuel Consumption	0.150	0.172	0.103	0.623
2301	Chemical Manufacturing	0.008	0.000	0.156	0.000
2302	Food and Kindred Products	0.075	0.000	0.299	0.000
2308	Rubber/Plastics Production	0.075	0.000	0.438	0.000
2399	Industrial Processes: NEC	0.093	0.000	0.185	0.000
2401	Surface Coating	2.589	0.000	11.352	0.000
2415	Degreasing	0.721	0.000	2.888	0.000
2420	Dry Cleaning	0.101	0.000	0.207	0.000
2425	Graphic Arts	0.292	0.000	0.005	0.000
2461	Misc. Commercial Solvent Use				
	Pesticide Use	1.135	0.000	1.230	0.000
	Cutback & Emulsified Asphalt	0.013	0.000	0.007	0.000
2465	Misc. Consumer Solvent Use	0.874	0.000	3.404	0.000
2501	Petroleum Product Storage	0.569	0.000	1.824	0.000
2505	Petroleum Product Transport	0.869	0.000	1.822	0.000
2601	On-Site Incineration	0.157	0.036	0.689	0.207
2610	Open Burning	0.475	0.095	1.572	0.314
2660	Leaking Underground Storage Tanks	0.015	0.000	0.012	0.000
2810	Misc. Sources: Other Combustion				

	Structural & Forest Fires	0.103	0.017	0.013	0.003
	Prescribed Burning	0.009	0.000	0.001	0.000
2830	Accidental Releases	1.645	0.000	0.419	0.000
Total Emissions by County		9.981	0.985	26.693	4.839
Total State NAA Emissions		VOC: 36.674		NOx: 5.824	

### 3. Off-Road Mobile Sources - New Emissions Standards

The EPA is under court order to promulgate new emissions standards for Heavy-Duty Compression Ignition (CI) or diesel engines, small nonroad Spark Ignition (SI) Engines, and outboard/Inboard Marine Engines. These new standards will result in VOC and/or NOx emission reductions from a wide variety of nonroad engines. In subsection 3.5.3, Delaware presents details of how to project emissions using these new emission standards.

A summary of the 2002 Control Strategy Projections for off-road mobile source emissions is presented in Table 19.

**Table 19**  
**2002 Control Strategy Projections for Off-Road Mobile Source Emissions (in TPD)**

Source	SCC	Category Name	Kent		New Castle	
			VOC	NOx	VOC	NOx
	2260	2-Stroke Gasoline Vehicles	0.680	0.047	1.650	0.424
	2265	4-Stroke Gasoline Vehicles	0.514	0.033	2.290	0.196
	2270	Diesel Vehicles	0.508	3.581	1.076	9.893
	2275	Aircraft	0.468	0.593	0.217	0.088
	2280	Commercial Marine Vehicles	0.582	3.678	1.077	6.351
	2282	Recreational Marine Vessels	0.086	0.009	7.127	0.734
	2283	Military Marine Vessels	0.004	0.020	0.007	0.037
	2285	Railroads	0.022	0.214	0.102	0.963

Total Emissions by County in 2002	2.864	8.175	13.546	18.686
Total State Emissions in 2002	NAA VOC: 16.410		NOx: 26.861	

### 3.4 On-Road Mobile Source 2002 Control Strategy Projection Methodology

The on-road mobile source portion of 2002 Control Strategy Projection Inventory has been determined using the 2002 emission factors generated by MOBILE5a and the 2002 projected vehicle-miles-traveled (VMT) on the 2002 Delaware roadway network. The 2002 VMT projections are determined using the network-based travel-demand models for Kent and New Castle Counties. The 2002 VMT projections and the 1990 VMT projections, both are calculated by the travel-demand models, are used to derive a growth factor for each functional vehicle class. The growth factor is then applied to the 1990 VMT from the Highway Performance Monitoring System (HPMS) data. This methodology provides consistency with the 1990 Base Year Inventory methodology, since they are both based on VMT from HPMT. The on-road mobile source projection inventory has been developed by Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, under contract with Delaware Department of Transportation (DelDOT).

A summary of the 2002 Control Strategy Projections for on-road mobile source emissions is presented in Table 20. The emission levels in Table 20 also serve as the on-road mobile source emission budgets for Kent and Newcastle Counties for purposes of meeting the transportation conformity requirements set forth in Section 182 of the CAAA.

**Table 20**  
**2002 Control Strategy Projections for On-Road Mobile Source Emissions (in TPD)**

County	VOC	NOx
Kent	6.300	9.810
New Castle	18.440	27.290
Total NAA	24.740	37.100

### 3.5 Emission Control Measures and Emission Reductions

The control measures that Delaware includes in the 2002 RPP are summarized in Table 21 along with implementation dates for individual control measures. The VOC and NOx emission reductions from individual control

measures are also listed in the table (in TPD in the peak ozone season). As indicated in Table 21, the total VOC and NOx emission reductions for Delaware's nonattainment area (i.e., Kent and New Castle Counties) for the 2002 RPP are 64.138 TPD and 44.804 TPD, respectively. As calculated in Part II, the emission reductions that Delaware needs to meet the 3% per year rate-of-progress requirement plus offsetting the growth for the 2002 milestone year are 64.138 TPD and 43.286 TPD for VOC and NOx, respectively. Therefore, the control measures listed in Table 3-7 are not only adequate to meet the emission reduction requirements for the 2002 milestone year, but also generate 1.518 TPD of surplus of NOx emission reductions. Delaware decides to use this NOx emission surplus in the contingency plan of the 2002 RPP to meet the contingency requirements set forth in the CAAA (See Part IV).

The control measures in Table 21 are grouped by point, area, off-road mobile, and on-road mobile source sectors depending on which source sectors they affect. Several control measures affect both point and area sources, and therefore are listed under both source sectors. For sources that will be subject to new controls by 2002, the emission reductions are determined by subtracting the 2002 Control Strategy Projection emissions (described in this part) from the 2002 Current Control Projection emissions (described in Part II of this Plan), using the following equation,

$$ER_{2002} = \text{Current Control Projection} - \text{Control Strategy Projection} \quad (R-1)$$

where  $ER_{2002}$  stands for "Emission Reduction (ER) in 2002". For sources that will not have new controls or will not be affected by new rules by 2002, their control strategy projections will be equal to their current control projections. Thus, emission reductions from those sources will be zero.

**Table 21**  
**Summary of VOC & NOx Emission Control Measures and Expected Emission Reductions for 2002 (in TPD)**

Control Measures And Regulations	Creditability	Effective Date	Emission Reduction	
			VOC	NOx
<b>Point Source Controls</b>				
<b>RACT "Catch-Ups" in Kent County:</b>				
Solvent Metal Cleaning	Creditable	31-May-95	0.547	0.000
<b>Stationary Area Source Controls</b>				
<b>RACT "Catch-Ups" in Kent County:</b>				
Solvent Metal Cleaning	Creditable	31-May-95	0.136	0.000
Cutback Asphalt	Creditable	31-May-95	0.026	0.000
<b>Subtotal for RACT "Catch-Ups" in Kent</b>			<b>0.588</b>	<b>0.000</b>
<b>New RACT Regulations:</b>				
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	31-Dec-95	1.896	0.000
SOCMI Reactor Processes and Distillation Operations	Creditable	1-Apr-96	0.026	0.000
Batch Processing Operations	Creditable	1-Apr-96	0.431	0.000
Offset Lithography	Creditable	1-Apr-96	0.085	0.000
Aerospace Coatings	Creditable	1-Apr-96	0.007	0.000
Industrial Cleaning Solvents	Creditable	1-Nov-96	0.518	0.000
Non-CTG RACT	Creditable	31-May-95	0.380	0.000
Delaware NOx RACT	Creditable	31-May-95	N/A	2.320
<b>Subtotal for New RACT Regulations</b>			<b>3.343</b>	<b>2.320</b>
<b>Regional Controls:</b>				
OTR Regional NOx MOU	Creditable	1-May-99	N/A	27.220
<b>Federal Benzene Waste Rule and Delaware Air Regulation 24.28</b>				
Delaware Air Regulation 24.28	Creditable	Spring 1995	1.722	0.000
<b>Other Delaware Regulations:</b>				
Sanitary Landfills	Creditable	9-Oct-93	0.345	0.000
Irreversible Process Changes	Creditable	1-Jan-96	1.964	0.000
<b>Total for Point Source Reductions</b>			<b>7.962</b>	<b>29.540</b>

Subtotal for RACT "Catch-Ups" in Kent	0.162	0.000
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Control Measures And Regulations Stationary Area Source Controls (Cont'd)	Credibility	Effective Date	Emission Reduction	
			VOC	NOx
New RACT Regulations:				
Stage I Vapor Recovery-Gas. Disps. Facil.	Creditable	15-Nov-94	0.652	0.000
Emulsified Asphalt	Creditable	31-May-95	0.053	0.000
Motor Vehicle Refinishing	Creditable	1-Apr-96	1.324	0.000
Offset Lithography	Creditable	1-Apr-96	0.081	0.000
Aerospace Coatings	Creditable	1-Apr-96	0.033	0.000
Stage II Vapor Recovery	Creditable	15-Nov-94	1.882	0.000
Subtotal for New RACT Regulations			4.025	0.000
Other Delaware Regulations:				
Open Burning	Creditable	8-Feb-95	7.831	1.559
Federal Rules				
Consumer Products	Creditable	11-Sep-98	0.957	0.000
Architectural Coatings	Creditable	11-Sep-98	1.340	0.000
Total for Area Source Reductions			14.315	1.559
Off-Road Mobile Source Controls				
Reformulated Fuel	Creditable	1-Jan-95	0.033	0.000
New Emission Standards:				
For Small Spark Ignit. Engines	Creditable	EPA:	4.067	0.049
For Compression Ignit. Engines	Creditable	Court	0.732	2.824
For Marine Engines	Creditable	Ordered.	1.019	-0.060
For Locomotives	Creditable	31-Dec-01	0.000	0.521
Total for Off-Road Mobile Source Reductions			5.851	3.334
On-Road Mobile Source Controls				
FMVCP and RVP	Noncreditable	Pre-1990	19.930	2.530
Tier I Vehicle Emissions Standards	Creditable	Model Year 94	4.280	5.950

a. Basic I/M for Kent County	Creditable	1-Jan-91	1.210	0.530
b. ATP and Pressure Test for Kent		1-Jan-95		
ATP and Pressure Test for New Castle	Creditable	1-Jan-95	4.300	0.700
Reformulated Fuel	Creditable	1-Jan-95	5.880	-0.190
LEV Program	Creditable	1-Nov-99	0.410	0.850
Total for On-Road Mobile Source Reductions			36.010	10.370
Total Reductions from All Controls			64.138	44.803

## PART IV

### Contingency Plan of Delaware's 2002 RPP

#### 4.1 Contingency Requirements for Emission Reductions

The CAAA requires States with nonattainment areas to implement specific control measures if the area fails to make reasonable further progress, fails to meet any applicable milestone, or fails to attain the national ambient air quality standards by the applicable attainment date.<sup>1</sup> The EPA has interpreted this CAAA provision as a requirement for States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their Rate-of-Progress Plans so that, upon implementation of such measures, additional emission reductions of at least 3% of the adjusted 1990 base year emissions would be achieved (Reference 13). Under the same provision of the CAAA, EPA also requires that the contingency measures must be fully-adopted control measures or rules, so that, upon failure to meet milestone requirements or attain the standards, the contingency measures can be implemented without any further rulemaking activities by the States and/or EPA. To meet the requirements for contingency emission reductions, EPA allows States to use NOx emission reductions to substitute for VOC emission reductions in their contingency plans. The condition set forth by EPA for NOx substitution is that States must achieve a minimum of 0.3% VOC reductions of the total 3% contingency reduction, and the remaining 2.7% reduction can be achieved through NOx emission controls (Reference 9). Delaware decides to include both VOC and NOx emission controls in its contingency plan for the 2002 Rate-of-Progress Plan.

1. CAAA, Title I, Part D, Section 172(c)(9) and Section 182(c)(9).

## **4.2 Control Measures to Meet Contingency Requirements**

Delaware proposes to achieve the required contingency emission reductions through controls over both VOC and NO<sub>x</sub> emissions. The VOC emission reductions will be obtained from implementing an annual inspection schedule for the Stage II Vapor Recovery Systems, and the NO<sub>x</sub> emission reductions will be achieved through a combination of controls on various sources in the peak ozone season, as well as through improvement of rule effectiveness (RE) for the regional NO<sub>x</sub> emission control rule.

### **4.2.1 Stage II Vapor Recovery System with Annual Inspections**

The CAAA requires States with moderate and above ozone nonattainment areas to submit a SIP revision requiring owners or operators of gasoline dispensing facilities to install and operate a system for gasoline vapor recovery during refueling process for motor vehicles.<sup>1</sup> Under this requirement, Delaware has developed its Stage II Vapor Recovery Program, which is defined in Section 36 of Delaware Air Regulation 24 (Reference 5). The Delaware's stage II vapor recovery regulation gives the regulatory agency the right to perform compliance inspections as needed. Currently, a triennial inspection schedule is performed by the responsible agency (Underground Storage Tank Branch of DNREC). Delaware has taken credit for VOC emission reductions from this triennial inspection schedule in Part III of the 2002 RPP, where the emission reductions are estimated using a control efficiency (CE) of 95%, a rule penetration (RP) of 97%, and a rule effectiveness (RE) of 65.3% according to an EPA's guidance document. The total creditable VOC emission reduction from the triennial inspection is 1.88 TPD (Part III of the 2002 RPP).

Additional VOC emission reductions can be obtained from the Stage II Vapor Recovery Program when the inspection frequency is increased. If the program is conducted with an annual inspection schedule, the rule effectiveness (RE) value of this control will increase from 65.3% to 90.5%, resulting in additional VOC emission reductions. In other words, the program is more effective for reducing VOC emissions with a higher inspection frequency. Delaware proposes to perform an annual inspection schedule for its Stage II Vapor Recovery Program as a contingency measure. Based on a 95% control efficiency, a 97% rule penetration, and a 90.5% rule effectiveness, the emission factor generated from MOBILE5a is 0.88 grams of VOC per gallon of gasoline for both Kent and New Castle Counties.

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1. CAAA, Title I, Part D, Section 182(b)(3).

According to EPA's guidance document Procedures for Emissions Inventory Preparation, Volume IV: Mobile Sources (Reference 22), the in-use efficiency of stage II vapor recovery system applies to both spillage and displacement. As determined in the 2002 RPP, the annual inspection in the Stage II Vapor Recovery Program will lead to additional VOC emission reductions of 0.05 TPD and 0.53 TPD from spillage and displacement, respectively. The total additional VOC emission reduction is therefore 0.58 TPD ( $0.05 + 0.53 = 0.58$ ).

In Part I, Delaware has determined its 1990 adjusted baseline inventory level of VOC emissions to be 133.153 TPD. The additional 0.58 TPD VOC emission reduction estimated above is  $(0.58/133.153) = 0.0043 = 0.43\%$  of the 1990 adjusted base year VOC emissions, thus, satisfying the 0.30% minimum requirement on VOC emission reductions for the contingency plan. The rest of the contingency reductions will be obtained through NO<sub>x</sub> controls, which will be discussed in the following subsection.

### **4.2.2 NO<sub>x</sub> Emission Controls in Peak Ozone Season**

As determined above, 0.43% of the 3.00% contingency requirement will be obtained by VOC emission reductions from annual inspection of Stage II vapor recovery systems. The remaining 2.57% (i.e.,  $3.00\% - 0.43\% = 2.57\%$ ) is the percentage required for NO<sub>x</sub> reduction substitution. The adjusted 1990 base year NO<sub>x</sub> emission level has been determined to be 158.405 TPD in Part I (page 1-19). Thus, the NO<sub>x</sub> emission reductions for contingency purpose will be at least  $158.405 \times 2.57\% = 4.07$  TPD.

In Subsection 3.5, Part III of the 2002 RPP, Delaware has demonstrated that, through adequate NO<sub>x</sub> emission controls, a 1.52 TPD NO<sub>x</sub> emission reduction will be achieved, in addition to those needed to meet the minimum rate-of-progress requirements for the 2002 RPP. Delaware shall use this additional 1.52 TPD NO<sub>x</sub> emission reduction in this contingency plan based on the following judgements. First, this additional reduction shall be achieved from a combination of control measures in the RPP. Second, all these control measures are fully-adopted measures or rules. Thus, no further rulemaking actions by the State and/or EPA are needed when this 1.52 TPD NO<sub>x</sub> reduction surplus becomes necessary to serve the contingency purpose. After including the above 1.52 TPD NO<sub>x</sub> reduction in the contingency plan, Delaware needs to achieve an additional 2.55 TPD (i.e.,  $4.07 - 1.52 = 2.55$ ) in NO<sub>x</sub> emission reductions to meet the minimum requirement for the contingency purpose. This NO<sub>x</sub> reduction will be achieved through RE improvement.

Delaware has promulgated the OTC Regional NO<sub>x</sub>

Controls through its Regulation 37 (NO<sub>x</sub> Budget Program, as amended in April 1999). As demonstrated in Appendix N of the 2002 RPP, the provisions in Regulation 37 give Delaware the capability to improve the rule effectiveness (RE) for all affected NO<sub>x</sub> sources from the default value of 80% to 92%. Applying this improved RE value of 92% to all affected sources, the projections of their NO<sub>x</sub> emissions in 2002 can be reevaluated. The total NO<sub>x</sub> emissions from these sources with a RE value of 92% is 29.77 TPD. If compared with the total reduction of 27.22 TPD obtained with the default RE of 80% (Table 3-17 in Part III of the 2002 RPP), the additional reduction will be 2.55 TPD (i.e.,  $29.77 - 27.22 = 2.55$ ). This additional 2.55 TPD NO<sub>x</sub> emission reduction can be obtained through RE improvement without any further rule-making activities at both State and federal levels.

#### 4.3 Summary of Contingency Measures and Emission Reductions

A summary of the contingency measures and the associated additional VOC and NO<sub>x</sub> emission reductions are presented in Table 22. As shown in Table 22 and in the discussions above, the contingency measures proposed herein are adequate for meeting the contingency requirements set forth by EPA.

**Table 22. Summary of Contingency Measures and Emission Reductions**

Contingency Measures	Emission Reduction (TPD)	
	VOC	NO <sub>x</sub>
Stage II Vapor Rec. with Annual Inspection	0.58	-
Required VOC Emission Reductions	0.58	-
NO <sub>x</sub> Controls in Peak Ozone Season	-	1.52
RE Improvement on NO <sub>x</sub> Regional Control Rule	-	2.55
Total NO <sub>x</sub> Emission Reduction	-	4.07
Required NO <sub>x</sub> Emission Reductions	-	4.07

#### PART V DOCUMENTATION

This part presents a collection of supporting documents referred to in Part I through Part IV of the 2002 RPP. The documents are in appendix form and include the following:

- APPENDIX A: Summation of Perchloroethylene Emissions from Delaware 1990 Base Year Emission Inventory.
- APPENDIX B: Mobile 5a Input and Output Parameters for the 1990 Adjusted Base Year Inventory Relative to the Milestone

Year 2002.

- APPENDIX C: Development of Growth Factors for the 2002 Rate-of-Progress Plan.
- APPENDIX D: Point Source Emission Projections for the 2002 Current Control Projection Inventory.
- APPENDIX E: Stationary Area and Off-Road Mobile Source Emission Projections for the 2002 Current Control Pro and Control Strategy Inventories.
- APPENDIX F: On-Road Mobile Source Projection Methodology and Data for the 2002 Current Control and Control Strategy Projection Inventory.
- APPENDIX G: Point Source Emission Projections for 2002 Control Strategy Projection Inventory.
- APPENDIX H: Collection of EPA Guidance Documents Referred in 2002 RPP (Hard copy).
- APPENDIX I: VOC Emissions Reductions from the Federal Benzene Waste Rule and Delaware Regulation 24.28.
- APPENDIX J: Mobile 5a Input and Output Files for Stage II Vapor Recovery with Triennial Inspection.
- APPENDIX K: VOC and NO<sub>x</sub> Emission Reductions from New Emission Standards on Nonroad Diesel Engines.
- APPENDIX L: Methodology for Determining VOC and NO<sub>x</sub> Emissions Reductions from On-Road Mobile Source Control Measures.
- APPENDIX M: Mobile 5a Input and Output Files for Stage II Vapor Recovery with Annual Inspection.
- APPENDIX N: Rule Effectiveness Improvement for NO<sub>x</sub> Emission Sources Covered by Delaware Regulation 37.

All appendixes are available upon request. Written request should be addressed to Mr. Alfred R. Deramo, Program Manager, ERPA/PCP/AQM/DNREC, 156 South State Street, Dover, DE 19901, or through fax at (302)739-3106, or via e-mail at [aderamo@state.de.us](mailto:aderamo@state.de.us).

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-FIVE**

**TO:** HEADS OF ALL STATE DEPARTMENTS,  
AGENCIES AND AUTHORITIES, AND ALL  
POLITICAL SUBDIVISIONS AND  
GOVERNMENTAL UNITS OF THE  
STATE OF DELAWARE.

**RE:** ESTABLISHMENT OF THE WORKFORCE  
INVESTMENT BOARD

WHEREAS, the economic future of Delaware and the prosperity of its citizens depend upon the ability of businesses in Delaware to compete in the world economy; and

WHEREAS, a well-educated and highly skilled workforce provides businesses in Delaware with a competitive edge critical for their success; and

WHEREAS, coordinating the planning, budgeting, and service delivery functions of the various federal and state workforce development programs at the state and local level will increase accountability, improve the quality and effectiveness of services, and help provide businesses in this state with an element critical to their success - a high quality workforce; and

WHEREAS, changes in federal law provide Delaware the opportunity to coordinate and streamline investments in the workforce under one board at the state level; and

WHEREAS, empowering local business, labor, and community leaders to take a more prominent role in their communities' economic and workforce development activities will enhance the quality, efficiency, and responsiveness of these programs.

NOW, THEREFORE, I, THOMAS R. CARPER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Workforce Investment Board (the "Board") is hereby established.

2. The Board shall not exceed fifty-three voting members appointed by the Governor. The Governor shall designate one of the business representatives on the Board to serve as Chairperson and one other business member to serve as Vice-Chairperson. Each member shall serve at the pleasure of the Governor. The membership of the Board shall reflect the demographic and geographic diversity of the State and shall be composed of:

(A) the Governor;

(B) 2 members of the Senate, appointed by the

President Pro Tempore of the Senate, and 2 members of the House of Representatives, appointed by the Speaker of the House; and

(C) representatives appointed by the Governor, who are:

(i) representatives of business in the State, who:

(a) are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(b) represent businesses with employment opportunities that reflect the employment opportunities of the State; and

(c) are appointed from among individuals nominated by State business organizations and business trade associations;

(ii) chief elected officials (representing both cities and counties, where appropriate);

(iii) representatives of labor organizations who have been nominated by State labor federations;

(iv) representatives of individuals and organizations that have experience with respect to youth activities;

(v) representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the State;

(vi) the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) of Public Law 105-220-Aug.7 1998, the Workforce Investment Act (WIA) and carried out by one-stop partners; and

(vii) such other representatives and State agency officials as the Governor may designate, such as State agency officials responsible for economic development and juvenile justice programs in the State.

3. A majority of the members of the State Board shall be representatives of businesses described in paragraph C(i) above.

4. An Executive Director shall staff the Board.

5. The State Board shall assist the Governor in:

(A) Promoting and developing a well-educated, highly skilled Delaware workforce by creating a coordinated, comprehensive workforce development system;

(B) Overseeing and coordinating all state and federal workforce investment programs;

(C) Developing a strategic plan including goals and strategies for all state and federal workforce development programs and/or populations including:

(i) School-to-Work (Grades 11 to 14);

(ii) Welfare-to-Work;

(iii) Prison-to-Work;

- (iv) Customized Worker Training;
- (v) Economically Disadvantaged Persons; and
- (vi) Dislocated Workers;

(D) Developing, implementing and coordinating standards and measures to evaluate the effectiveness and efficiency of workforce development programs;

(E) Promoting integrated service delivery and information systems at the state and local level for all workforce development programs;

(F) Determining which workforce development advisory councils are redundant and recommending which should be eliminated;

(G) Assuming the duties, responsibilities and functions of the State Job Training Coordinating Council, the State Occupational Information Coordinating Committee, the Delaware Workforce Development Council, and such other workforce development advisory councils that the Board recommends for elimination;

(H) Developing and implementing a plan for assuming the duties, responsibilities and functions of the Delaware Private Industry Council (DPIC) including oversight of the "Blue-Collar Act" Title 19 Del. C. § 3402 (3) a. & (3) b;

(I) Developing federal regulatory waiver applications to consolidate training programs and streamline the delivery of services ("One-Stop Shopping");

(J) Establishing linkages with other entities necessary to enhance the development of a State strategic plan for workforce development;

(K) Commenting annually on the measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2323(b)(14));

(L) Developing and continuously improving comprehensive State performance measures, to assess the effectiveness of the workforce development in the State;

(M) Preparing the annual report to the U.S. Secretary of Labor;

(N) Developing the statewide employment statistics system;

(O) Developing an application for an incentive grant under section 503 of WIA; and

(P) Carrying out the responsibilities of the Local Board as outlined in WIA.

6. The Board may promulgate bylaws, consistent with law and with this Executive Order, governing its organization and procedure.

7. The Board shall meet at the call of the Chairperson, or as provided by rules adopted by the Board, but shall not meet less than annually.

8. Members of the Board may receive reimbursement for necessary travel and expenses.

9. Forty Percent (40%) of the serving members shall constitute a quorum for the transaction of business at a

meeting, notwithstanding the existence of one or more vacancies. Decisions of the Board must be approved by a majority of those members constituting a quorum at a meeting of the Board.

10. The State Auditor of Accounts, or a certified public accountant appointed by the State Auditor of Accounts, may annually conduct and remit to the Governor and the General Assembly an audit of the Board and, in the conduct of the audit, shall have access to all records of the Board.

11. The Delaware Workforce Development Council is hereby eliminated.

12. Executive Orders Twenty-Five and Forty-Seven are hereby rescinded to the extent inconsistent with this Order.

APPROVED this 31<sup>st</sup> day of January, 2000

Thomas R. Carper, Governor

Attest

Edward Freel, Secretary of State

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-SIX**

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES, AUTHORITIES, ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: AMENDMENT TO EXECUTIVE ORDER NUMBER THIRTY-SIX REGARDING STATE EMPLOYEE OBLIGATIONS AND COMPENSATION DURING EMERGENCIES

1. WHEREAS, the Emergency Management provisions of Title 20 were amended in 1997 to allow the Governor greater flexibility in managing emergency situations; and

2. WHEREAS, there is a need to modify Executive Order 36 so that it is consistent with the new provisions of Title 20.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that Executive Order 36 is amended as follows:

1. The phrases "Proclamation of a State of Emergency" and "declaration of a state of emergency" are

replaced wherever they appear by the word "Order".

2. The word "Proclamation" is replaced wherever it appears by the word "Order".

3. The phrase "a declared emergency" is replaced wherever it appears in paragraphs 10 and 11 by the phrase "an emergency".

Approved this 4<sup>th</sup> day of February, 2000.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

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**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council for Children, Youth and Their Families	Mr. Steven Anderson	01/17/02
	Mr. Russell Fiske	01/17/02
	Mr. John Hollis	01/17/02
	Ms. Lorena Stone	01/17/02
	Mr. Charles Wilt	01/17/02
	Mr. Daniel Young	01/17/02
Architectural Accessibility Board	Mr. Abdul Qaissaanee	01/17/03
Council on Corrections	Dr. James C. Hardcastle	01/12/03
Delaware Alcohol Beverage Control Commission	Mr. Kenneth W. Edwards	01/31/03
Delaware Board of Examiners for Nursing Home Administrators	Ms. Joan McDonough	01/17/03
Historical Records Advisory Board	Ms. Deborah Haskell	12/10/00
Human Relations Commission	Ms. Christine Kraft	04/22/03
	Mr. Harold Truxon	12/04/02
Industrial Accident Board	Mr. Irving S. Levitt	01/31/06
New Castle County Board of Elections	Mr. Jeffrey E. Cragg	07/05/00
Organ & Tissue Donor Awareness Board	Ms. Linda L. Jones	01/17/03
Superior Court of the State of Delaware for Sussex County	The Honorable T. Henley Graves	01/19/12
Water Supply Coordinating Council	Mr. Kash Srinivasan	Pleasure of the Governor
	Mr. Paul S. Stead	Pleasure of the Governor

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. Section 6010)

**Secretary's Order No. 2000-A-0004**

Date of Issuance: January 14, 2000

Effective Date of the SIP Revision: March 11, 2000

**I. Background**

On Tuesday, January 4, 2000, beginning at 6:00 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of the public hearing was to receive comments on the Department's proposal to adopt an *Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area* as a SIP revision. State Representative Robert J. Valihura, Jr., and one other member of the public attended the public hearing but made no comments concerning the proposal. After the public hearing, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated January 12, 2000, and that memorandum is expressly incorporated herein by reference.

**II. Findings and Conclusions**

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 12, 2000, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

**III. Order**

In view of the above, I hereby order that the *Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area* be adopted as proposed at the public hearing as a revision to the SIP in the manner and form provided for by law.

**IV. Reasons**

Amending the SIP to include the *Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area* will further the policies and purposes of 7 Del. C. Chapter 60, because the SIP will result in progress toward

attaining the 1-hour ozone NAAQS. The record demonstrates that progress towards attaining the 1-hour ozone NAAQS will positively effect the health of Delaware's citizens and the environment because high levels of ground-level ozone can harm the respiratory system, cause breathing problems, throat irritation, coughing, chest pains and greater susceptibility to respiratory infection. In addition, the record demonstrates that Delaware is required by the federal Clean Air Act to adopt the Addendum as part of its Phase II Demonstration of progress towards meeting the 1-hour ozone NAAQS.

Nicholas A. DiPasquale  
Secretary

**Addendum To The Delaware Phase II Attainment  
Demonstration for the Philadelphia-Wilmington-  
Trenton Ozone Nonattainment Area (May 1998)**

**Submitted by  
State of Delaware  
Department of Natural Resources and Environmental  
Control  
Division of Air and Waste management  
Air Quality Management Section  
In Conjunction With The Delaware Department of  
Transportation**

**November 1999**

List of Acronyms

AQMS	DNREC's Air Quality Management Section
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DNREC	Delaware Department of Natural Resources and Environmental Control
EPA	The U.S. Environmental Protection Agency
FMVCP	Federal Motor Vehicle Control Program
HDDE	Heavy-Duty Diesel Engine
HDGV	Heavy-Duty Gasoline Vehicle
LDDT	Light-Duty Diesel Trucks
LDGV	Light-Duty Gasoline Vehicles
LDGT1	Light-Duty Gasoline Truck 1 (0 - 3750 pounds)
LDGT2	Light-Duty Gasoline Truck 2 (3750 - 5750 pounds)
LEV	Low Emission Vehicle
MOBILE	EPA's Software tool for estimating on-road mobile source VOC, NOx and CO emissions factors
NAA	Nonattainment area
NAAQS	National Ambient Air Quality Standards
NLEV	National Low Emission Vehicle
NOx	Oxides of Nitrogen

NRDC	Natural Resources Defense Council
OTAG	Ozone Transport Assessment Group
OTR	Ozone Transport Region
RFG	Reformulated Gasoline
RPP	Rate-of-Progress Plan
SIP	State Implementation Plan
TPD	Tons per Peak Ozone Season Day
UAM	Urban Airshed Model
VMT	Vehicles Miles Traveled
VOC	Volatile Organic Compounds

### 1. Introduction

The Clean Air Act Amendments of 1990 (CAAA) require all "serious" and above ozone nonattainment areas (NAAs) to submit their attainment demonstrations based on the photochemical grid model such as the Urban Airshed Model (UAM). Kent and New Castle Counties are the two "severe" counties for which Delaware is in nonattainment with the 1-hour ozone National Ambient Air Quality Standard (NAAQS). These two counties are part of a larger NAA -the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), which has been named as the Philadelphia-Wilmington-Trenton NAA. The CAAA requires a modeled attainment demonstration for the entire Philadelphia-Wilmington-Trenton NAA, and the attainment year for the severe ozone Philadelphia-Wilmington-Trenton NAA is year 2005.

In May 1998 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision entitled "The Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area" ("The Delaware Phase II document"). The Delaware Phase II document successfully demonstrated attainment of the 1-hour ozone NAAQS for the Delaware portion of the Philadelphia-Wilmington-Trenton ozone NAA for the July 18-20, 1991 episode with the Ozone Transport Assessment Group (OTAG) Run2 boundary conditions. Recently EPA determined that there is a shortfall in the attainment demonstration for the Philadelphia-Wilmington-Trenton ozone NAA and identified the requirements that the states should meet in order to get their Phase II attainment demonstrations approved. This document lists all the EPA identified requirements and addresses how Delaware will fulfil those requirements to get the Delaware Phase II Attainment Demonstration Plan approved.

The agency with direct responsibilities for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management Section, Air Quality Management Section (AQMS), under the direction of Darryl D. Tyler, Program Administrator. The working responsibility for Delaware's air quality planning falls within

the Planning and Community Protection (PCP) Branch of the Air Quality Management Section of DNREC under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of State Implementation Planning Program (SIPP) Group is the project manager and chief editor of this document. Mohammed A. Mazeed, Ph.D., P.E. is the principal author of this document, and Janet Kremer of EPA Region III Office is responsible for developing necessary emissions factors required for developing the on-road mobile source emissions budgets.

### 2. EPA's Recent Additional Requirements for Getting the Phase II Attainment Demonstrations Approved

Due to the proposed court settlement between the Natural Resources Defense Council (NRDC) and EPA, EPA declared that the states should meet additional requirements for the approval of the 1-hour attainment demonstrations. They are:

**On-road Mobile Source Emissions Budgets:** states should include in their Phase II Attainment Demonstration SIPs adequate on-road mobile source volatile organic compound (VOC) and oxides of nitrogen (NOx) emissions budgets for use in transportation conformity.

**Regional NOx Reductions:** states must have rules adopted or, for severe areas an enforceable commitment to adopt controls consistent with the NOx reductions assumed in the attainment plan.

**Additional Measures:** enforceable commitment is required from states to adopt additional measures, which may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally in individual states.

**Mid-Course Review:** an enforceable commitment is required from states to conduct a mid-course review and evaluation based on air quality and emissions trends.

**Clean Air Act Measures:** states must adopt and submit rules for all previously required CAAA mandated measures for the specific area classification including measures needed for 15% and 9% rate of progress. The 15% and 9% rate-of-progress plans (RPPs) are required by Section 182(d) of the CAAA.

**Fuel Reductions:** states should include in their Phase II attainment demonstration SIPs reductions expected from Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration.

### 3. Delaware's Response and Commitments

This addendum addresses how Delaware fulfils its obligations for meeting EPA's approval of the Delaware Phase II attainment demonstration. They are addressed below.

#### 3.1 Phase II On-Road Mobile Source Emissions Budgets & Fuel Reductions

This section addresses two of the six requirements addressed above - the on-road mobile source emissions budgets and fuel reductions. An April 30, 1999 letter from Judith Katz (Director, Air Protection Division, EPA Region III Office) states that, in order for the on-road mobile source emissions budgets to be adequate for the purposes of transportation conformity, the budgets should reflect the National Low Emission Vehicle (NLEV) and heavy-duty diesel engine (HDDE) programs (*Appendix 1*). Another requirement for the adequacy of the on-road mobile source emissions budgets is that the control measures should be in effect on the attainment date. Ms. Katz's October 26, 1999 letter declares that Delaware's motor vehicle budgets are inadequate (*Appendix 2*).

A draft memo dated October 14, 1999 from Lydia Wegman (Director, Air Quality Standards and Standards Division) ("Wegman memo") (*Appendix 3*) states that, if the attainment demonstration contains shortfalls the states should use Tier 2 Federal Motor Vehicle Control Program (FMVCP) and low sulfur-in-fuel standards ("Tier 2") in their attainment demonstrations. Recently EPA has identified that the Philadelphia CMSA has an attainment shortfall, and therefore the Delaware Phase II Attainment Plan meets Lydia Wegman's criterion for including the Tier 2 emissions reductions in its on-road mobile source emissions budgets.

The Delaware Phase II document did not identify the on-road mobile source emissions budgets that are necessary for the purposes of transportation conformity. This addendum assigns the on-road mobile source emissions budgets for the Kent and New Castle county severe ozone NAA. Delaware, in its Phase II document, besides the benefits of other control measures, claimed the benefits of Low Emission Vehicle (LEV) standards, but did not claim the benefit of HDDE emissions standards. The requirement, however, is that the budgets should reflect NLEV program but not LEV, and the HDDE program. In developing the on-road mobile source emissions budgets this addendum replaces the benefit of the LEV program with the NLEV program and adds the benefit of the HDDE program. The benefits of HDDE program and the NOx benefit of Phase II reformulated gasoline (RFG II) cannot be modeled using Mobile5a, the EPA model that was originally used for estimating the on-road mobile source VOC, NOx and CO emissions factors. Therefore, it was necessary to use the updated model, Mobile5b. In developing Delaware's Phase II attainment on-road mobile source emissions budgets, the EPA Region III office ran the Mobile5b model to estimate necessary emissions factors. The resulting on-road mobile source emissions with the NLEV, HDDE and RFG II control measures are listed in Table 1.

**Table 1. On-Road Mobile Source Emissions Estimates for 2005 with NLEV, HDDE and RFG II Programs in Tons per Peak Ozone Season Day (TPD)**

COUNTY	VOC EMISSIONS	NOx EMISSIONS
Kent	5.00	8.81
New Castle	15.30	25.63
Total Nonattainment Area	20.30	34.44

To satisfy the criterion in the Wegman memo, this addendum includes the emissions reductions from Tier 2 standards. The spreadsheets containing Tier 2 reductions in 2005 listed in the Wegman memo are provided by the EPA Region III office. These reductions are calculated from the 2007 inventories by applying the ratios of 2005 to 2007 emission factors (based on Mobile5b) and Vehicles Miles Traveled (VMT) to the 2007 inventories. The Mobile5b runs used national defaults for many of the inputs, and the VMT projections used in this analysis were derived from the National Emissions Trends report. Because of these simplifying assumptions, these estimates should be viewed only as approximations. The exact figures can be estimated when Mobile6 becomes available. The Wegman memo lists the approximate benefits from Tier 2 emission reductions by county by vehicle type in the NAA. For Kent and New Castle Counties, the VOC and reductions in year 2005 are listed in Table 2.

**Table 2. Emissions Reductions due to Tier 2/Low Sulfur-in-Fuel for Year 2005 in Tons per Peak Ozone Season Day (TPD)**

County	Vehicle Type*	VOC Emissions	NOx Emissions
Kent	LDGV	0.0525	0.3680
	LDGT1	0.0666	0.3683
	LDGT2	0.0362	0.1355
	LDDT	0.0013	0.0032
	HDGV	0.0042	0.0301
<i>Kent County Subtotal</i>		<i>0.1608</i>	<i>0.9051</i>
New Castle	LDGV	0.1894	1.1621
	LDGT1	0.2074	1.0638
	LDGT2	0.1227	0.4045
	LDDT	0.0052	0.0103

	HDGV	0.0126	0.0691
<i>New Castle County Subtotal</i>		<i>0.5373</i>	<i>2.7098</i>
Total Nonattainment Area		0.6981	3.6149

\* see the acronym listing for information on each vehicle type

The effect of Tier 2 control is to further reduce the emissions listed in Table 1. For Kent County it reduces the VOC and NO<sub>x</sub> emissions by 0.16 and 0.91 TPD, respectively, and for New Castle County by 0.54 and 2.71 TPD, respectively. Note that the Tier 2 emissions reductions are rounded to two significant figures after the decimal to stay consistent with the mobile source emissions estimates. The resulting 2005 on-road mobile emissions with all controls including Tier 2 are listed in Table 3.

Table 3. On-Road Mobile Source Emissions Estimates for Year 2005 with NLEV, HDDE, RFG II and Tier 2/Low Sulfur-in-Fuel Programs in Tons per Peak Ozone Season Day (TPD)

COUNTY	VOC EMISSIONS	NO <sub>x</sub> EMISSIONS
Kent	4.84	7.90
New Castle	14.76	22.92
Total Nonattainment Area	19.60	30.82

For the purposes of transportation conformity, the year 2005 VOC and NO<sub>x</sub> emissions budgets for Kent County are established here as 4.84 TPD and 7.90 TPD, respectively; and for New Castle County the year 2005 VOC and NO<sub>x</sub> emissions budgets are 14.76 TPD and 22.92 TPD, respectively.

### 3.2 Regional NO<sub>x</sub> Reductions

EPA requires that for the nonattainment area the states must adopt controls consistent with the NO<sub>x</sub> reductions assumed in the attainment plan, and that the states in their attainment plans can assume reductions in transported NO<sub>x</sub> consistent with EPA's NO<sub>x</sub> SIP call. Delaware, in its attainment demonstration, assumed transported NO<sub>x</sub> consistent with the NO<sub>x</sub> SIP Call. As pointed out in the Delaware Phase II attainment document, UAM simulations performed with the OTAG run2 boundary conditions exhibited attainment of the 1-hour ozone NAAQS for Delaware portion of the modeling domain. Delaware hereby commits to adopt control measures consistent with the NO<sub>x</sub> reductions assumed in its Phase II attainment plan.

### 3.3 Additional Measures

EPA has declared that the Philadelphia CMSA has shortfalls in the attainment demonstrations, and identified the amount of attainment shortfalls for the CMSA

for which the states need to develop additional control measures. EPA requires, the states to adopt additional measures, and these measures can be adopted regionally such as in the Ozone Transport Region (OTR), or locally in individual states. Delaware hereby commits to adopt additional control measures, with the assumption that the EPA identified amount is correct.

### 3.4 Mid-Course Review

EPA requires from Delaware an enforceable commitment to conduct a mid-course review and evaluation based on air quality and emissions trends. The mid-course review could show that 1) the adopted control measures are sufficient to reach attainment by the area's attainment date, or 2) that additional control measures are necessary. EPA will provide guidance to identify an indicator as to whether a state is on track toward attainment within the prescribed time limits. The indicator will solely rely on air quality data plus a review of past modeling or emission controls implemented prior to the time of mid-course review. Delaware hereby commits to conduct a mid-course review and evaluation based on air quality and emissions trends.

### 3.5 Clean Air Act Measures

EPA requires that states adopt and submit rules for all previously required CAAA mandated measures for the specific area classification including measures needed for the 15% and 9% RPPs. Delaware adopted all necessary CAAA measures needed for 15% and 9% RPPs through the 2002 RPP. The EPA has already approved Delaware's 15% Plan. The 1999 RPP (amended) was submitted in June, 1999. It contained fully adopted measures and is awaiting EPA approval. The 2002 RPP has been through the public hearing process and will be submitted in the near future. It contains fully adopted measures. The 2005 RPP is under development and will be submitted before December, 2000. It will contain fully adopted measures.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
BOARD OF ACCOUNTANCY**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Pursuant to due notice of time and place of hearing published in the News Journal and the Delaware State News, and pursuant to 29 Del.C. §10115, having published the following proposed regulations in the Register of Regulations on January 1, 2000, a public hearing on the adoption of the proposed new rules and regulations was held before the Delaware Board ("Board") of Accountancy on February 23, 2000. **Following deliberations, the Board voted to approve the following rules and regulations in their entirety, with the exception of Rules 6.3.2 and 6.4.2, to which amendments were proposed, as indicated herein. Accordingly, a second public hearing will be held as to the new proposed amendments. A final order will issue adopting all approved rules at the conclusion of all public hearings.**

A public hearing will be held on the proposed amendments to the Rules and Regulations on Wednesday, April 26, 2000 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed amendments to the Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**BOARD OF COSMETOLOGY & BARBERING**

The Delaware Board of Cosmetology and Barbering proposes to amend current Rule 5.1, pursuant to 24 Del.C. §§ 5106 and 29 Del.C. Ch. 101. The purpose of the proposed amendment is to clarify that work experience required for licensure by reciprocity must have been obtained in a state or jurisdiction outside of Delaware.

A public hearing on the proposed regulation will be held on Monday, April 24, 2000 at 9:00 a.m., in Conference Room A, Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and

consider input from interested persons on the proposed rule amendment. Oral comments will be received at the public hearing. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. §2509, the Delaware Board of Pharmacy has developed and proposes to adopt changes to Regulations I - Pharmacist Licensure Requirements, II Grounds for Disciplinary Proceeding, and V Dispensing. The changes to Regulation I eliminate the Continuing Education Committee, transferring the Committee's responsibilities to the Board. The conduct previously defined in Regulation II as "gross immorality" is now included in the term "unprofessional conduct". Regulation V may be amended to include a definition for "container", to clarify the activity allowed for supportive personnel to insure a final check of a prescription by a pharmacist and to allow for electronically transmitted prescriptions.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, April 12, 2000 at 12:00 noon in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Rules and Regulations. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address.

This notice will be published in two newspapers of general circulation not less than twenty- (20) days before the hearing in addition to publication in the Register of Regulations. Written copies of the proposed regulations may be obtained from the Board of Pharmacy by contacting Gradella E. Bunting at the above address or calling (302) 739-4798.

**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF CLINICAL SOCIAL WORK**  
**EXAMINERS**

**Public Hearing Notice**

The Delaware Board of Clinical Social Work Examiners proposes to amend and adopt new rule changes, pursuant to 24 **Del.C.** Section 3906(1) and (7) and 29 **Del.C.** Chapter 101. The purpose of the hearing is to adopt proposed rule changes: amending Rule 5 and 6.3 regarding Continuing Education, and adding a new Rule 7.0 addressing Ethics.

The Board's Rule regarding Continuing Education has been rewritten in its entirety. Many provisions in the Board's current Rule 5 remain substantively the same, but some have been renumbered or corrected for grammar and format. Substantive changes include clarifying requirements for hardship extension; allowing credit for certain self-directed activities and requiring pre-approval of such activities by the Board; and clarifying content requirements and Category I and II courses. Rule 6.3 has been amended to make its definition of "hardship" consistent with that in Rule 5.1.3. Finally, Rule 7.0, Code of Ethics is a new rule designed to provide licensees with rules and guidelines for the conduct of safe, ethical practice in the areas of client services, relationships with clients, confidentiality, ethical business practices and clinical supervision.

A public hearing on the proposed rules will be held on Monday, April 17, 2000 at 9:30 a.m. in Conference Room B, Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input in writing from any person on the proposed rules. Any written comments should be submitted to the Board office, in care of Gayle L. Franzolino, 861 Silver Lake Blvd., Suite 203, Cannon Bldg., Dover, DE 19904. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed rules, or to make comments at the public hearing should notify Gayle L. Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**GAMING CONTROL BOARD**

The Board proposes a new section 1.03(10) to the existing Bingo Regulations. The amendment would require the bingo applicant to provide full and fair description of the prize to be awarded and appraised value of the prize. The amendment would also permit the Board to require an

independent appraisal of the prize.

Copies of the existing Bingo Regulations and the proposed regulation as amended are attached. The public may obtain copies of the proposed regulations from the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. The contact person at the Board is Denise Spear and she can be contacted at (302) 739-4522 ext. 202. The Board will accept written comments from the public beginning March 1, 2000 through April 5, 2000. A public hearing will be held at the Delaware Gaming Control Board, 2<sup>nd</sup> Floor Conference Room, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE on April 6, 2000 at 12:00 p.m.

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, March 17, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF NATURAL**  
**RESOURCES AND**  
**ENVIRONMENTAL CONTROL**  
**DIVISION OF FISH & WILDLIFE**

**Register Notice**

1. Title of the Regulation:  
Shellfish Regulations S-54 Possession Limit on Horseshoe Crabs; Exceptions
2. Brief Synopsis of the Subject, Substance and Issues:  
The Interstate Fishery Management Plan for Horseshoe Crab, (FMP) adopted by the Atlantic States Marine Fisheries Commission, has imposed a 25% reduction in the number of horseshoe crabs that may be harvested in 2000 by each Atlantic Coastal State relative to their average annual reference period landings. For Delaware, the reference period landings for horseshoe crabs are in the years 1995, 1996 and 1997 when an annual average 482,401 horseshoe crabs were landed. In 2000, Delaware must not land more than 361,801 horseshoe crabs to meet the mandatory requirement of the FMP. Regulations must be in effect by May 1, 2000 to implement this reduction. This reduction in landings will conserve the horseshoe crab population in order to maintain sustainable levels of spawning stock biomass and ensure its continued role in the ecology of

coastal ecosystems while providing for continued use over time.

The Department is considering daily harvest limits for horseshoe crab collectors, horseshoe crab dredgers and commercial eel pot fishermen to reduce their harvest to 361,801 horseshoe crabs. The Department also is considering to require written permission to collect horseshoe crabs from private lands. The Department also is considering to ban the bringing of horseshoe crabs into state waters from the Exclusive Economic Zone.

3. Possible Terms of the Agency Action:

If Delaware fails to comply with the FMP, the horseshoe crab fishery in the State may be closed by the Secretary of the Department of Commerce until such time Delaware meets the requirements of the FMP.

4. Statutory Basis or Legal Authority to Act:  
§2701, 7 Del. C.

5. Other Regulations That May Be Affected by the Proposal:

Shellfish Regulation S-51, Seasons and Areas closed to taking Horseshoe Crabs; S-55, Horseshoe Crab Dredging Restrictions; S-57, Horseshoe Crab Reporting Requirements

6. Notice of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, 302-739-3441 prior to 4:30 PM. A public workshop will be held in the Department of Natural Resources and Environmental Control auditorium on March 7, 2000 at 7:30 PM to discuss various options to reduce the harvest of horseshoe crabs by 25%. A public hearing on proposed amendments to shellfish regulations on horseshoe crabs will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on March 20, 2000. The record will remain open until 4:30 PM on March 30, 2000.

7. Prepared by:

Charles A. Lesser(302)-739-3441

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**DEPARTMENT OF PUBLIC SAFETY****DIVISION OF MOTOR VEHICLES****Notice of Public Hearing**

The Department of Public Safety will hold a hearing Pursuant to 29 Del. C. Chapter 101 concerning the adoption of Policy Regulation 45 entitled "Driver Improvement Problem Driver Program" that replaces current Policy Regulation 45 entitled "Driver Point System."

The Department will also receive public comment regarding a proposed Department of Public Safety Policy Regulation to establish administrative procedures to implement an aggressive driver program as outlined in 21 Del.C. 4175A, Aggressive Driving. This proposed Policy Regulation would become Policy Regulation Number 90 Concerning Aggressive Drivers

DATE: Wednesday, March 22<sup>nd</sup>, 2000

TIME: 10:00 AM

PLACE: Main Conference room (2<sup>nd</sup> Floor)

Department of Public Safety

Public Safety Building

303 Transportation Circle

Dover, Delaware 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 AM to 4:00 PM, Monday, Tuesday, Thursday and Friday or between the hours of 12:00 PM and 7:00 PM on Wednesday, at the Division of Motor Vehicles, Chief of Driver Services Office, in the Public Safety Building, 303 Transportation Circle, Dover, Delaware 19901.

Persons may present their views in writing by mailing their views to the Chief of Driver Services, Division of Motor Vehicles, PO Box 698, Dover, Delaware 19903 or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

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**PUBLIC SERVICE COMMISSION**

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. All such materials shall be filed on or before March 31, 2000.

In addition, the Commission will conduct a public hearing concerning the proposed changes on Tuesday, April 11, 2000, beginning at 1:00 PM. The public hearing will be held at the Commission's Dover office, located at the address set forth above. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The Minimum Filing Requirements, the proposed changes to the same, and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's Secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at knickerson@state.de.us.

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**DELAWARE RIVER BASIN  
COMMISSION**

**P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Tuesday, March 7, 2000, in Reading, Pennsylvania. For more information contact Pamela M. Bush at (609) 883-9500 extention 203.

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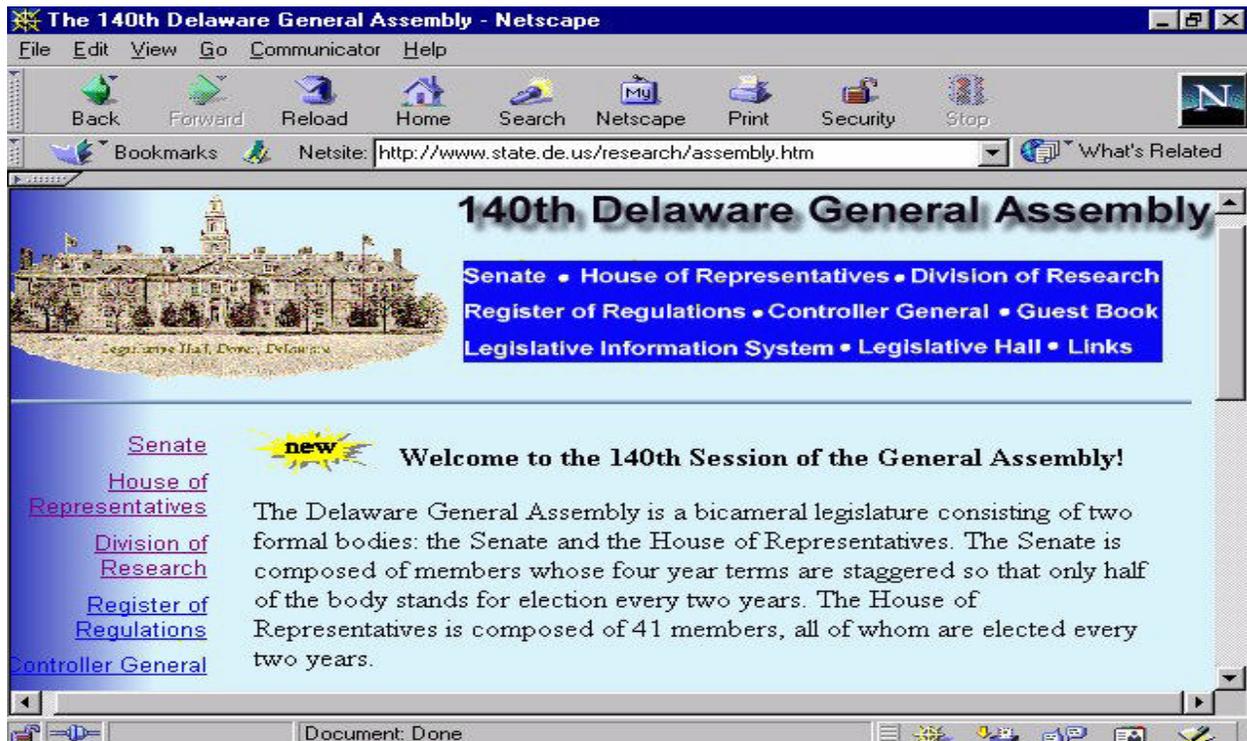
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